SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

ORIGINAL NO. ———

STATE OF LOUISIANA

versus

THE STATE OF TEXAS ET ALS.

BILL OF COMPLAINT.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The State of Louisiana, one of the United States of America, by Murphy J. Foster, Governor, brings this her bill of complaint against the State of Texas, one of the United States of America, and against Joseph D. Sayers, a citizen of the State of Texas, in his capacity as Governor of the State of Texas, and against William F. Blunt, a citizen of the State of Texas, in his capacity as Health Officer of the State of Texas.

And thereupon your orator complains and says:

That the City of New Orleans, one of the great commercial cities of this republic, and the second export city of this continent, containing about two hundred and seventy-five thousand inhabitants, many of whom are largely engaged in interstate commerce with the inhabitants of the State of Texas, is situated within the territory of your orator; that

said city contains nearly one-fourth of all the inhabitants of your orator, and the assessed values of her property are more than one-half the assessed values of the whole State, and she contributes by taxes and licenses more than five-eighths of your orator's revenue.

That two lines of railroad, the Southern Pacific and the Texas and Pacific, run directly from the City of New Orleans through the States of Louisiana and Texas, and into the States and Territories of the United States and of Mexico, beyond the State of Texas, with the inhabitants of which States and Territories the citizens of New Orleans are also engaged in interstate and foreign commerce, such commerce largely following the lines of said railroads and their many connections.

That the State of Texas, by her Revised Civil Statutes, adopted at the regular session of the Twenty-fourth Legislature, held in the year 1895, being Title XCII thereof, has granted to her Governor and her Health Officer extensive powers over the establishment and maintenance of quarantines against infectious or contagious diseases, with authority to make rules and regulations for the detention of vessels persons and property coming into the State from places infected, or deemed to be infected, with such diseases.

That Joseph D. Sayers, a citizen of the State of Texas, is now, and has been for some time past, Governor of said State.

That William F. Blunt, a citizen of the State of Texas, is now, and has been for some time past, the State Health Officer of the State of Texas.

That the ports of said State, situated on the Gulf coast, are engaged in commerce with the ports of Mexico, Central and South America and Cuba, known to be permanently infected with yellow fever; said commerce being largely competitive with similar commerce coming to the port of New Orleans.

That on the 1st day of March, 1899, Joseph D. Sayers, Governor of the State of Texas, under the provisions of the said laws, issued his proclamation establishing quarantine on the Gulf coast and Rio Grande border against all places, persons or things coming from places infected by yellow fever,

etc., a copy of which proclamation is hereto annexed and made part of this bill and marked Exhibit "A."

That the rules and regulations established in said quarantine proclamation permit trade and commerce between such infected ports and the State of Texas, and provide for the fumigation and reasonable detention of ships and cargoes from infected ports.

That on or about the 31st day of August, 1899, a case of yellow fever was officially declared to exist in the City of New Orleans, in a part of the city several miles away from the commercial part thereof, and from that time to this several other sporadic cases have been reported in similar parts of the city.

That as soon as said first case was reported the said William F. Blunt, Health Officer of the State of Texas, claiming to act under the provisions of Article 4324 of the Revised Civil Statutes, under the pretence of establishing a quarantine, placed an embargo on all interstate commerce between the City of New Orleans and the State of Texas, absolutely prohibiting all common carriers entering the State of Texas from bringing into the State any freight or passengers or even the mails of the United States, coming from the City of New Orleans, and to enforce these orders he immediately placed, and now maintains, armed guards, acting under the authority of the State of Texas, on all the lines of travel from the State of Louisiana into the State of Texas, with instructions to enforce the embargo declared by him *vi et armis*, which instructions these armed guards are carrying out to the letter; that about six days later he modified his order so as to permit the Government of the United States to carry and deliver the mails; and also modified his order so as to permit persons and their baggage to enter the State of Texas, after ten days detention at the quarantine detention-camps, established by him, and after fumigation of their baggage; but that he now maintains, and announces his intention to maintain indefinitely, his absolute prohibition of all interstate commerce between the City of New Orleans and the State of Texas; that he has refused to permit the introduction of sulphuric acid in

iron drums, unpacked hardware, machinery, and other articles coming from localities in the City of New Orleans, far removed from the places where the sporadic cases of fever have occurred, and which by their nature are concededly incapable of conveying infection; that he had established no system of classification or inspection of the articles of interstate commerce, coming from the City of New Orleans, to determine whether they are, or may be, infected, or whether they are capable, or not, of conveying infection, no period of detention for such articles, no place or method of disinfection thereof; his only method being absolute and unconditional prohibition of such interstate commerce; that it is a notorious fact, and well known to said Blunt, that all of the interstate commerce between New Orleans and Texas is carried on by railroads, and none by water communication between the port of New Orleans and the Texas ports, and that the effect of his orders is to destroy all such commerce, to take away the trade of the merchants and business men of the city of New Orleans, and to transfer that trade to rival business cities in the State of Texas.

That while Joseph D. Sayers, Governor of the State of Texas, has issued no formal proclamation of quarantine, as provided by law, to-wit: Art. 4324 of the Revised Civil Statutes, defining the rules and regulations of such quarantine so declared by said Blunt, your orator charges that the rules and regulations established by said Blunt have the full force of law until modified or changed by the proclamation of the Governor, and that the Governor knows all these facts and approves and adopts the same, and permits these rules and regulations to stand and to be executed in full force and effect as established by said Blunt.

Now your orator recognizes the right and power of the State of Texas and the public officials thereof to take prudent and reasonable measures to protect the people of said State from infection, to establish quarantine and reasonable inspection laws, but your orator denies that said State, or its officials, acting under its laws, under the cover of exercising

its police powers, can prohibit or so burden interstate commerce as to make such commerce impossible.

Your orator avers that it is a recognized and acknowledged fact by all the sanitarians and health officials of the various States exposed to infection by yellow fever and by the health officials of the United States, and by all scientific students of infection and sanitation, that commerce can be conducted between infected and non-infected points, with small inconvenience and without any danger of infection, by classifying the articles of commerce and by pursuing certain well-recognized rules and precautions with reference to the articles and vehicles of commerce.

That after the yellow fever outbreak of 1897 a quarantine convention was held in Mobile, Ala., and, on the advice of that convention, a conference of the health officials of Virginia, South Carolina, Georgia, Florida, Alabama, Mississippi, Missouri and the United States Marine Hospital Service met at Atlanta, Ga., and formulated such regulations which were adopted by the Boards of Health of all said States, and, as subsequently revised, are now in full force and effect between the said States; that additional experience having been gained by the reappearance of yellow fever in the fall of 1898, a revising conference was held in the City of New Orleans on February 9, 1899, at which conference the Atlanta regulations were in some respects modified. A copy of the said regulations, original and as modified, are hereto annexed and made part of this bill and marked Exhibit "B."

Your orator avers that said William F. Blunt, or his predecessor in office, was Health Officer of the State of Texas at the time these conferences were held, that he and his predecessor in office refused or neglected to attend them in person or by representative, and he has continually refused to adopt the Atlanta regulations, or any of them, or any regulations similar to them, and insists, as his predecessor in office insisted, upon being a law to himself, and upon using no means of dealing with yellow fever infection in the City of New Orleans, or elsewhere in the State of Louisiana, real or imaginary, except an absolute embargo upon interstate commerce

to be established at his pleasure and to last as long as he chooses to maintain it.

That in pursuance of this policy, in the year 1897, his predecessor in office established a similar embargo on interstate commerce between New Orleans and other points in Louisiana, supposed by him to be infected, and the State of Texas, on the 10th day of September; and refused to remove or to modify said embargo until the day of December, 1897, during which period he even refused to permit railroad cars that had been in the City of New Orleans to enter or even pass through the State of Texas, on their way to the countries, States and Territories beyond.

That in pursuance of the same policy, in the year 1898, the said William F. Blunt, Health Officer, and the Governor of the State of Texas, established a similar embargo on all interstate commerce between the State of Louisiana and the State of Texas, on the 18th day of September, and refused to remove or modify the same until the 1st day of November.

That in pursuance of the same policy, the said William F. Blunt, because a single case of yellow fever was declared in the City of New Orleans, did on May 30, 1899, establish a similar embargo on interstate commerce between the City of New Orleans and the State of Texas, which he refused to modify or to remove until June 9, 1899, and then only under great pressure, although he was advised on June 2d 1899, by the representatives of the health authorities of the States of Alabama and Mississippi, of the United States Marine Hospital Service, and of the Louisiana State Board of Health, who had been for some days in the City of New Orleans, making a personal inspection of her sanitary and health conditions, that they deemed it "unnecessary and unwise for any State or city to quarantine against New Orleans under present conditions."

Your orator avers that the State of Texas, her Governor and her Health Officer, as shown by the rules and regulations established by them in the proclamation aforesaid for the quarantine on the Gulf coast, admit the truthfulness of the claim of your orator that commerce can be carried on with in-

fected places and ports, under reasonable rules and regulations as to inspection, fumigation and detention, and admit that there are articles of commerce incapable of conveying infection, and actually permit such commerce in all articles to be so carried on to the advantage and benefit of the commerce of the ports of Texas and her merchants engaged in commerce in said ports.

Your orator avers that the effect of the embargoes imposed by the State of Texas upon the commerce of the City of New Orleans with Texas is to build up and benefit the commerce of the City of Galveston, in Texas, and the commerce of other cities in Texas, all of which are commercial rivals of the city of New Orleans for the large commerce of the State of Texas and the adjoining States and Territories.

That prior to the embargoes aforesaid of the years 1897 and 1898 the City of New Orleans was the greatest cotton exporting port of the United States, and a very large portion of the cotton grown in Texas was exported through the port of New Orleans; for instance, for the season 1894–5 more than 31 per cent. thereof; for the season 1895–6 more than 30 per cent. thereof; for the season 1896–7, 25 per cent. thereof.

That as consequence of the two trade embargoes aforesaid the percentage of the Texas cotton crop exported through the port of New Orleans for the season of 1897–8 was only 19 per cent.; and for the season of 1898–9 was only 15 per cent.; and for the season of 1898–9, ending September 1, 1899, the City of Galveston handled more export cotton than the City of New Orleans.

That the effect of said embargoes is all the more disastrous to the commerce of your orator, and of her cities and towns, because declared and made operative during the months of September, October, November and the early part of December, the period of the greatest activity and the largest movement of commerce among the States of the South, and between the State of Louisiana, the City of New Orleans and the State of Texas.

Now your orator avers that in view of the unreasonable,

harsh, prohibitive and discriminating character of the pretended quarantines, declared and maintained by the State of Texas and her Health Officer, against the City of New Orleans and other localities in the State of Louisiana, is nothing less than a commercial war declared against your orator, her ports, cities and citizens: not for the *bona fide* purpose of protecting the health of the State of Texas, but for the purpose of increasing the trade and commerce of the State of Texas and of her ports, cities and citizens, to the great damage and injury of your orator and her citizens; that such embargoes on interstate commerce injure and impoverish your orator's citizens, reduce the value of her taxable property, diminish her revenues, retard immigration, reduce the value of her public lands, and deprive her citizens of their rights and privileges as citizens of the United States.

Your orator avers that the embargo upon interstate commerce between the City of New Orleans, in the State of Louisiana, and the State of Texas, established by said Blunt on or about the first day of September, 1899, and now maintained by him and the other officials of the State of Texas, will be continued by them for an indefinite period, to the great damage and injury of your orator's ports, commerce and revenues, and to the commerce of her citizens and to the rights of her citizens under the Constitution of the United States, unless they be enjoined and restrained by order of this Court.

Your orator avers that, from the past conduct of the State of Texas, and of her Governors and Health Officers, your orator is justified in averring and charging, and does aver and charge, that it is the fixed purpose and intention of the said State, and of her Governors and Health Officers, whenever in the future any case of yellow fever, or other infectious disease, occurs in any parish, city or town within your orator's borders, to immediately declare, set up and maintain an absolute prohibition of interstate commerce between said supposed infected parish, city or town, and the State of Texas, and to keep the same in force during the pleasure of such officials, or to make and establish discrimi-

native rules and regulations covering quarantines on such interstate commerce, different from and more burdensome than the rules and regulations concerning quarantines on interstate commerce with other States and foreign commerce with countries also infected with yellow fever, or other infectious diseases, and thereby to injure and oppress your orator and her citizens.

Now your orator avers that the absolute prohibition against the movement and operation of interstate commerce between the City of New Orleans and the inhabitants thereof, and the State of Texas and the inhabitants thereof, established by said William F. Blunt, Health Officer of the State of Texas, and now maintained and enforced by him, the Governor and the other officials of the State of Texas, is in direct contravention of the provisions of the Constitution of the United States, and particularly of that clause thereof which grants to the Congress power to regulate commerce with foreign nations, among the several States, and with the Indian tribes, and is null, void and of no effect, and the continuance thereof ought to be restrained by the order of this honorable Court.

Your orator further avers that the various cities, counties and towns in the State of Texas have authority, under the statutes aforesaid, to establish quarantines, but all such quarantines are by statute subordinate to, subject to and regulated by the rules and regulations prescribed by the Governor and the State Health Officer, and that, therefore, all such quarantines are dirigible and controllable by the Governor and the Health Officer of Texas.

Your orator is informed and believes and so charges that it is the intention of certain counties, cities and towns along the lines of the railroads aforesaid, in case your Honors should restrain the operation of the embargo established as aforesaid by William F. Blunt, State Health Officer, to severally establish the same embargo on their own account, and to prevent the passage of trains on said railroads carrying interstate commerce from the City of New Orleans through

them to other parts of the State of Texas and to other States, and to so hinder, obstruct and delay the transportation of said commerce along the lines of railroad running through their limits as to render its conduct impossible; that in case it should be considered that the public authorities of such counties, towns and cities are not personally bound by any order your Honors may issue in this cause, and in case they should attempt to carry out any such illegal plan, your orato reserves the right hereafter to make such officials parties to this bill, so as to subject them to the control of the Court.

To the end, therefore, that the said defendants may, if they can show why your orator should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information and belief, full, true, direct and perfect answer make to the matters and things averred in this bill, may it please your Honors to grant to your orator the most gracious writ of subpœna, directed to the State of Texas, to Joseph D. Sayers, Governor of the State of Texas, and to William F. Blunt, Health Officer of the State of Texas, commanding them, and each of them, to be and appear in this Honorable Court on a day to be therein named, and to abide the judgment of the Court.

And after due proceedings, may it please your Honors to adjudge and decree that neither the State of Texas, nor her Governor, nor her Health Officer, have the right, under the cover of an exercise of police or quarantine powers, to declare and enforce against interstate commerce, between the State of Louisiana, or any part thereof, and the State of Texas, an absolute embargo, prohibiting the movement and conduct of said commerce, or to make, declare and enforce against places infected with yellow fever, or other infectious diseases, in the State of Louisiana, discriminative quarantine rules and regulations affecting interstate commerce between the State of Louisiana, or any part thereof, and the State of Texas, different from and more burdensome than the quarantine rules

and regulations affecting interstate or foreign commerce between the State of Texas and other States and countries infected with yellow fever, or other infectious diseases, and that the embargo and prohibition upon interstate commerce between the City of New Orleans and the State of Texas, declared by William F. Blunt, Health Officer of the State of Texas, on or about the 1st day of September, 1899, and now maintained and enforced by the State of Texas, under the guise of a quarantine against yellow fever, is contrary to the Constitution of the United States, null, void and of no effect and validity.

And may it please your Honors to issue a preliminary writ of injunction from this Honorable Court, prohibiting, enjoining and restraining the State of Texas, and all of her officers and public officials, and prohibiting, enjoining and restraining Joseph D. Sayers, Governor of the State of Texas, and William F. Blunt, Health Officer of the State of Texas, their successors in office, and all of their subordinates, assistants, agents and employees, from establishing, maintaining and enforcing, or attempting to establish, maintain and enforce, under the guise of a quarantine against yellow fever, any embargo or absolute prohibition upon interstate commerce between the State of Louisiana, or any part thereof, and the State of Texas, or from establishing, maintaining and enforcing, or attempting to establish, maintain and enforce against interstate commerce between the State of Louisiana, or any part thereof, and the State of Texas, discriminative and burdensome quarantine regulations other and different from the regulations established by such authorities against foreign and interstate commerce between the State of Texas and other countries and States infected with yellow fever, or other infectious diseases, and particularly enjoining, prohibiting and restraining them, and each of them, from maintaining or enforcing, directly or indirectly, the prohibitory embargo on interstate commerce established against the City of New Orleans on or about the first day of September, 1899, under the guise and pretence of a quarantine regulation; and may it please your Honors on final hearing to make said injunction perpetual.

And your orator prays that she may be allowed her costs in this cause expended, and that she may have all such other and further general and equitable relief as the nature of the case may require.

MILTON J. CUNNINGHAM,
Attorney General of Louisiana.

EDGAR H. FARRAR,
BENJAMIN F. JONAS,
ERNEST B. KRUTTSCHNITT,
E. HOWARD MCCALEB,
Of Counsel.

STATE OF LOUISIANA,
Parish of East Baton Rouge.

Personally came and appeared before me, the undersigned authority, Murphy J. Foster, who, being duly sworn, deposes and says that he is the Governor of the State of Louisiana, that he has read the foregoing bill and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief.

MURPHY J. FOSTER.

Sworn to and subscribed before me this 12th day of October, 1899.

T. JONES CROSS,
Notary Public.

[Seal].

EXHIBIT "A."

ANNEXED TO AND MADE PART OF BILL.

PROCLAMATION.

BY THE GOVERNOR OF TEXAS.

Be it known, that I, Joseph D. Sayers, Governor of the State of Texas, by authority vested in me by the laws of this State, do hereby declare that quarantine shall be established on the Gulf Coast and Rio Grande border on and after April 1, 1899; and it shall continue until closed by proclamation.

Said quarantine shall apply to all vessels, persons or things coming from places infected by yellow fever, smallpox or cholera, and all places south of 25 degrees north latitude shall be considered infected unless proof to the contrary be submitted to the State Health Officer, and special exemption be granted to said places, and persons from such places are prohibited from entering this State within a period of ten days.

I further declare quarantine against any person or persons infected or liable to be infected with yellow fever, smallpox or cholera, either within or without the State, and direct the Quarantine Officers of the State and Health Officers of counties and towns to establish local quarantines around any and all such persons whenever discovered.

The Coast Quarantine Stations shall be governed by the following rules:

RULE 1. Ten days must have elapsed, from the day of sailing from an infected port, before vessels will be allowed to enter the ports of Texas, except fruit vessels, and such vessels as have been given written permits to do so.

RULE 2. Vessels arriving outside of Texas ports, with sickness on board at the time of arrival, of either yellow fever or cholera, must not be brought inside of the bar by pilots, but must be at once reported to the local Quarantine Officer, who will at once report same to the State Health Officer, and he will endeavor to have such vessel ordered to the nearest United States Marine Hospital Service for treatment.

RULE 3. Vessels from an infected place, having had sickness and death en route, but none at the time of arrival, will be fumigated and

held five full days after fumigation, under observation, before being released, and a longer time if considered necessary by the State Health Officer.

RULE 4. Vessels from places actually infected will be fumigated and held under observation five full days.

RULE 5. Vessels from places south of 25 degrees north latitude, with clean bills of health, and having had no sickness on board, will be fumigated, and held three days after fumigation.

RULE 6. Iron steamships arriving from ports south of 25 degrees north latitude not infected, with no cargo or passengers, or laden with such articles as can not possibly be carriers of infection, with clean bills of health from last clearance and the clearance preceding the last, and in good sanitary condition at the time of arrival, may be permitted to enter, after being fumigated, without further detention, if, in the judgment of the local quarantine officer, it is safe to do so.

RULE 7. Vessels wishing to engage in the fruit trade will be allowed to do so under special restrictions and regulations governing same.

All officials, military authorities and citizens of Texas are solicited to assist the quarantine officers in the execution of the above rules, and are earnestly requested to notify the Governor of any dereliction of duty by officers or employees, or any other facts that will give greater efficiency to the quarantine service.

In testimony whereof I have hereunto signed my name and have caused the seal of State to be affixed, at the City of Austin, this first day of March, A. D. 1899.

JOSEPH D. SAYERS,
Governor of Texas.

[SEAL] By the Governor:

The State of Texas. D. H. HARDY,
Secretary of State.

ing infection, such as roasted coffee, refined sugar, coal oil, creosote, acids, beans, peas, rice, salted meats, and articles of similar character.

(*d*) Fruits, sound, and taken directly in good condition from clean vessels, which have complied with all quarantine requirements, or cars and transferred at wharves or railroad depots not infected and in good sanitary condition, immediately to the disinfected cars or vessels for shipment.

(*e*) Fruit, vegetables and Western produce in barrels or boxes directly transferred as above.

(*f*) Freight in good sanitary condition, taken directly from clean vessels or cars to cars or vessels at a wharf or railroad siding, not infected and in good sanitary condition.

(*g*) Live stock and poultry.

*60 CLASS II.

The following articles will require only superficial disinfection—*i. e.*, outside of containers:

(*a*) All goods in original wooden or metallic packages, not broken or packed in an infected locality, when not included in Class I, such as boots and shoes, dry goods, leather goods, drugs and chemicals, patent medicines, oiled and rubber clothing, sugar, canned fruits, canned vegetables, canned meats, canned oysters, canned fish, condensed milk, stone ware, tin ware, tobacco, cigars, snuff, wines, tonics, liquors, cheese, flour, meal, grits, wooden ware, butter, tea, candles, soap, lard, starch, axle grease, iron roofing, saddletrees, raisins, matches, salted fish, molasses; rice, coffee, beans and peas in barrels; nuts, dried fruit, pickles, vinegar, olive oil, sauces, baking powder, soda, preserves.

(*b*) Articles which from their nature and mode of packing are incapable of receiving infection, and which sterilize the inside of the container, such as roasted coffee, refined sugar, molasses, coal oil, creosote, acids and articles of a similar character, when not included in Class I.

(*c*) Goods in textile material, not broken or packed in an infected locality and kept perfectly dry. This includes coffee, grain, and spice in sacks, cured hams in canvas, osnaburgs and other cotton goods in solid bales with close covering.

(*d*) Chemicals, patent medicines, drugs and druggists' sundries, not put up in an infected locality, when enclosed in glass, wood or metal, also hardware, when these articles are packed with sterilized excelsior.

*61 CLASS III.

Articles not in classes I and II may be shipped after disinfection.

(*a*) This refers to all classes of merchandise not in classes I and II, which are kept in stock for distribution at wholesale stores not exposed to any recognized infection.

(*b*) Articles that can be kept in excelsior in crates so as to render the excelsior and contents capable of disinfection belong to this class.

(*c*) Methods of disinfection are treated in a separate section of these regulations.

62 CLASS IV.

No bedding or household effects shall be received for shipment under any conditions.

*63. Inspectors shall not certify to any of the above classes if not satisfied that the articles will not convey infection.

*64. **Regulations Governing the Repacking and Disinfection of Goods Taken from Original Packages.**

a. Each establishment packing or repacking will provide a disinfecting chamber under the supervision of an inspector.

b. The workmen, on arrival, will disinfect their hands and faces. They will then change their outer clothing for sterilized clothing and remain in the work rooms during working hours.

c. The work rooms and all the premises shall be kept clean.

d. The outer clothing worn by the workmen during working hours shall be disinfected daily.

e. The same precautions are required of the inspectors.

f. If the goods to be packed are taken from previously opened packages they must be disinfected.

g. Work of this kind shall be done only in the wholesale districts.

*65. Provided that this method meets with the approval of the various State Boards of Health and State health officers where these goods are to be shipped.

*66. **Regulations Governing Workmen in Factories.**

67. The same regulations referring to workmen and premises of wholesale stores shall apply to factories.

68. In addition, the goods manufactured, if liable to convey infection, must be disinfected.

69. **Regulations Governing the Disinfecting of Freight on Cars and Steamboats.**

70. All freight in cars and the cars themselves, and all freight on or in boats and such parts of the boats themselves shall in all cases be disinfected by the United States Marine Hospital Service whenever and wherever that service may deem the same necessary.

71. **Regulations Governing Railroad Traffic from an Infected Town to Points South.**

72. A passenger train to an infectable locality shall not stop in an infected town, nor shall the windows or doors be allowed to be open therein, and no communication shall be allowed between the passengers or train crew and the town.

73. Freight traffic through such a town should be without stopping.

74. In cases where stopping in town is absolutely necessary for freight traffic, and also when the town is large, and the infection general, a special crew shall take the train through the town. The relay stations where these changes are made shall be under sanitary supervision.

75. Sanitary inspectors should also be stationed in town.

76. **Regulations Governing Freight Traffic from an Infected Town to Points South.**

77. Empties must not stay in an infected town or be parked in an infected locality.

78. Flat cars to be swept clean.

79. Box cars shall be made mechanically clean and dry, and sent open to the relay station, where they are to be inspected for tramps.

80. From the relay station they should be sent on under seal.
81. All fruit cars to be disinfected.
82. Cars should be removed from an infected locality as soon as emptied.
83. If not, they should be disinfected when they leave.
84*a*. If not disinfected, the cars should be sent with windows and doors open.
84*b*. The cars must be fully inspected at the relays for tramps.
*85. All disinfected cars must be placarded and way-bills certified to by proper sanitary officers.

86. Regulations Governing the Mails from an Infected Locality to Points South.

*87. Letter mail needs no disinfection except in a marked epidemic.
88. Newspapers must be disinfected.
89. Parcel mail is excluded altogether.

90. Regulations Governing Relays of Trains from an Infected Locality to Points South.

91. All train crews from an infected town must be changed and not be allowed to have direct communication with certainly clean territory,
92. This should be done at a non-infected place as isolated as possible; a siding, rather than a station, and certainly not in town.
93. Every man, mail agent, expressman and train butcher must make that relay.
94. If we know that he is going North, not to return to points South, in this case he is like a through passenger.
95. Pullman crew to be relayed.
96. None of the merchandise of the train butcher must pass the relay.
97. Disinfected newspapers will be excepted.
98. No possible fomites must pass the relay to the crew bound North, and as little communication as possible, none save such as is necessary for the run of the train, is allowed.
99. The relay must be under the supervision of a sanitary officer or officers (two are generally required), whose position is one of great responsibility.
100. At these stations a very careful search for tramps must be instituted.
101. The camps for the north and south crews should be at a considerable distance from each other.
102. The run of trains should be arranged so as to have the crews in camp as little as possible.
103. For passenger trains there need be no delay.
104. For freight trains generally there must be and their crews must go in camp.
105. Occasions may arise where it is necessary to guard the southern relay camp by a number of guards, as if it were a camp of detention.
106. It must never be allowed to become infected.
107. If it does the camp must be moved.

108. Regulations Governing Railroad Traffic from an Infected Town to Points North.

109. Through traffic—*i. e.*, to points incapable of receiving yellow fever infection, to be designated hereafter as "points North."
110. Freight in sealed cars can go without hindrance to destination.

111. Regulations Governing the Mails to Points North.

112. Through mail not distributed South needs no restrictions, except disinfection of bags.

113. Regulations Governing Passenger Traffic to Points North.

114. *Passenger* Traffic to points North can be allowed by preventing all chance of such passengers conveying infection *en route*, either by themselves leaving the train *en route* or by returning to points South, or by fomites, mainly their clothing.

115. This traffic should be on special cars reserved for these passengers, and preferably on a special train.

116. A Sanitary Inspector must accompany them through the quarantine territory, under whose absolute sanitary charge the train is.

117. The coaches which carry these passengers must be disinfected before the return South.

118. Laundry of Pullman cars must not be done in an infected place.

119. Regulations Governing Duties of Inspectors.

120. Train inspectors must be properly relayed.

121. Those running from the infected town should be immune.

122. If they sleep in clean territory they *must* be immune.

*123. Regulations Governing Steamboat Communications.

They may be carried on—

124. By supervision of the landing of freight and loading of the same, so as to prevent communication between the people ashore and the boat.

125. Regulations Governing Yellow Fever Localities.

*126. Localities infected with yellow fever, and localities contiguous thereto, may be depopulated as rapidly as possible, so far as the same can be safely done.

*127. Persons from non-infected localities, and who have not been exposed to infection, being allowed to leave without detention, and on leaving such place shall be provided with health certificate of the following form by the legally constituted health authorities of the place:

OFFICE OF BOARD OF HEALTH,
....., 189....

Health Officer: .....

TO WHOM IT MAY CONCERN:

This is to certify that Mr..... has given satisfactory evidence to me that he has been in ..... not less than ten days, and, to the best of my knowledge and belief, he has not been exposed to the infection of Yellow Fever, and has not been in any infected or suspected locality for ten days.

Description: Age, ... years. Weight, ... pounds. Height, ...
Complexion, ... Hair, ... Eyes, ...

Health Officer.

Signature: .....

128. When deemed necessary affidavit shall be required by the Health Officer.

129. The certificate shall be issued without fee.

130. **Regulations Governing Measures To Be Taken in a Town or Locality Which May Not Require Quarantine.**

*131. If the inspection of a town in which yellow fever exists show all foci of infection, possible fomites and persons liable to develop the disease are under observation, the town should not be quarantined.

132. When practicable, the patient shall be removed to hospital, or other quarters little liable to infection, and so situated as to involve a minimum of danger, if affected.

133. If the patient can not be removed, all possible precautions must be taken to prevent contamination of his premises.

134. Those certainly immune to yellow fever may be given free pratique after disinfection of effects.

135. Non-immunes may be permitted to go to places incapable of infection, to remain there during the period of incubation, requiring disinfection of baggage, unless certain that they will remain in such territory.

136. Non-immunes not going to such places shall, if practicable, be isolated under observation in non-infected quarters, so situated that if fever develop among them there shall be as little danger as possible of conveying infection; their effects being disinfected upon isolation.

137. Such persons as are isolated under observation on account of exposure to yellow fever shall be isolated for a period of not less than ten days from the last possible time of exposure to infection. They shall be inspected—twice daily is advised.

138. Premises occupied or having been occupied by a case sick with yellow fever shall be treated as infected and be under sanitary control.

139. Such neighboring premises as are close enough for their inmates to receive infection from the above shall also, with their inmates, be under sanitary control.

140. These premises shall be strictly guarded and no communication allowed with those outside except under such rules and supervision as will prevent the conveyance of the disease.

141. All possible precautions shall be taken to prevent exposure of the guards and other attendants to infection.

142. If possible, they shall be immune.

143. They shall be under proper supervision.

144. On the recovery, removal or death of a case of yellow fever the premises shall be immediately disinfected.

145. Such neighboring premises as from proximity are presumably infected are also to be disinfected.

146. Coincidently with the foregoing measures a house-to-house inspection should be made of the whole community, to determine whether other cases exist.

147. In the case of the death of a patient the body shall be disposed of under such sanitary precautions as will prevent the conveyance of infection.

148. **Regulations Governing Measures To Be Taken When a Town or Locality Requires To Be Quarantined.**

149. If the inspection of a town in which yellow fever exists does not show that all foci of infection, possible fomites and persons liable to develop the

disease, are under observation ("in quarantine") or if cases occur which can not be traced to any known focus, such town shall be subject to quarantine.

150. Those who have been exposed or who come from infected localities shall be required to undergo, in the camp of probation, or other designated place, a period of detention and observation of ten days from date of last exposure, before being permitted to proceed to a locality capable of being infected, their clothing and other effects capable of conveying infection being disinfected upon entrance to place of detention.

151. For persons known to be immune to yellow fever detention is not required, merely the disinfection of their baggage and clothing.

*152. The evidence of immunity shall be satisfactory to the health officer of the place to which he is bound.

153. Persons who have been exposed may be permitted to proceed, under proper sanitary supervision while passing through infected territory, without detention, to localities incapable of being infected, and whose authorities are willing to receive them, to remain their ten days.

154. The baggage of such persons shall be disinfected unless it is certain they will not return into infectable territory.

155. This exemption from disinfection shall not apply to baggage from an infected house for any point, or to baggage to points which object to receiving it undisinfected.

156. NOTE.—On account of the extreme difficulty of the health officer determining the ultimate destination of passengers bound for Atlanta, Charlotte, Nashville and similiar distributing points for passengers south, the baggage of such passengers should be disinfected.

157. An adjacent town which is in direct communication with an infected town must be considered as being neutral territory, and therefore under quarantine.

158. Also such territory as from its proximity or relations to an infected town can not be pronounced certainly clean.

159. **Regulations Governing Methods of Disinfection.**

160. The following methods of disinfection are considered efficient for Yellow Fever:

161. Apartments or dwellings infected with yellow fever to be disinfected by one or more of the following methods:

(a) By a thorough washing of all surfaces of apartments with an efficient germicidal solution.

(b) By sulphur dioxide for twenty-four hours' exposure, four pounds of sulphur for each 1000 cubic feet, plus due allowance made for waste.

(c) By formaldehyde gas, in not less than a 4 per cent. volume strength, and not less than six hours' exposure.

162. NOTE.—One litre of 40 per cent. solution of formaldehyde gas will involve about 170 litres (50.1 cubic feet) of gas at 20 deg. C. (68 deg. F.).

163. Grounds, outbuildings, etc., deemed to be infected to be disinfected with a strong solution of crude carbolic acid (carbolic acid, crude, two parts; sulphuric acid, one part; water, twenty-five parts) or an acid solution of bichloride of mercury (1-500); disinfection of ground preferably by fire.

164. Bedding, wearing apparel, carpets, upholstered furniture and the like to be disinfected by one or more of the following methods:

(*a*) By steam at a temperature of 100 to 102 deg. C., 30 minutes' exposure.
(*b*) By boiling, all parts of the article to be submerged.
(*c*) By saturation in an efficient germicidal solution.
(*d*) By thoroughly wetting the surface of the article with a 40 per cent. aqueous solution of formaldehyde, and placing them in a closed space for not less than twelve hours.
(*e*) Where surface disinfection is required formaldehyde gas of not less than a 4 per cent. volume strength and not less than six hours' exposure, or by sulphur dioxide for not less than twenty-four hours.

165. The dejecta from cases of yellow fever to be disinfected by an efficient germicidal solution.

166. Mails to be disinfected by one of the following methods:
(*a*) By formaldehyde.
(*b*) By sulphur dioxide.
(*c*) By steam.

167. Newspapers must be made up in such packages as shall be penetrable to the disinfectant used.

168. Articles injured by steam, such as rubber, leather and container, to which disinfection by steam is inapplicable, to be disinfected:
(*a*) By thoroughly wetting all surfaces with an efficient germicidal solution. the articles being allowed to dry.
(*b*) By exposure to sulphur dioxide.
(*c*) By exposure to formaldehyde gas.

169. The application of gaseous disinfection to these articles should be made in a closed space, air-tight, or as nearly so as possible.

170. The following are considered efficient germicidal solutions:
(1) Bichloride of mercury, acid, 1-1000.
(2) Carbolic acid, pure, 5 per cent. solution.
(3) Trikesol, 2 per cent. solution.
(4) Solution of formaldehyde, 1-500 (which is 2 parts of a 40 per cent. solution of formaldehyde to 25 parts of water).
(5) Solutions of hypochlorate of calcium (chloride of lime).

171. **Other Resolutions.**

172. *Resolved*, That this convention approves the plan of having medical inspectors attached to those consulates where yellow fever and cholera are epidemic, with a view of securing for our protection definite information as to the exact sanitary condition, and the presence or absence of contagious diseases in such consular district. And that Congress be urged to make the necessary appropriation to carry the plan into effect.

173. *Resolved*, That this convention is of the opinion that it is a duty devolving on all nations to take measures to eradicate any plague centre from their territory, and that the existence of such plague centres is a menace to other nations, and that our State Department be requested to take measures through proper diplomatic channels for the conveyance of this opinion to the governments deemed obnoxious to the opinion as herein expressed.

*174. No locality shall be quarantined on cases of contagious disease reported as suspicious or doubtful or disputed, provided the cases are properly isolated, the premises disinfected, the inmates and suspects thoroughly disinfected, and both inmates and suspects kept under proper observation by the local health authorities, all under the supervision and control of the State Board of Health, State Health Officer or United States Marine

Hospital Service, and such suspected case or cases shall be reported to the Health Officers or Boards of Health of adjacent States, and they be invited to send representatives to view said case or cases.

This resolution also to apply to sanitariums, hospitals and barracks.

The same to apply to the first case or cases of positive or genuine yellow fever.

*175. That all municipal corporate communities which are exposed to yellow fever infection in the South Atlantic and Gulf States provide isolation quarters for persons who may become infected, or who may have been exposed to infection.

*176. That the foregoing amendments be adopted as a whole, including all of the old Atlanta Regulations which have not beeu amended or stricken out.

177. *Resolved*, That a copy of these proceedings be sent to the governors of the States of Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, Tennessee, and Arkansas, with a request that they communicate the same to the different Health Officials of their respective States.

178. *Resolved*, That the Health Officials, State, county, and municipal, of the above States be requested to adopt the regulations of the Atlanta convention as a basis of their quarantine proceedings.

179. *Resolved*, That a copy of the regulations of this convention be forwarded to each member of Congress.

180*a*. *Resolved*, That the chair appoint a committee of three on publication.

180*b*. The Chair appointed Dr. Edmond Souchon, of New Orleans, La., Chairman; Dr. Rhett Goode, of Mobile, Ala.; Dr. J. F. Alexander, of Atlanta, Ga.

Chairman of Committee on Publication:

EDMOND SOUCHON, M. D.,
President Louisiana State Board of Health.

APPENDIX.

The regulations governing Disinfection and Detention Stations or Camps, and Governing Freight, had been previously adopted and recommended, about as printed above, by a Conference between representatives of Southern Boards of Health, Railroad and Steamboat officials.

The Conference had been called by Dr. Edmond Souchon, President of the State Board of Health of Louisiana; it was held in the city of New Orleans, on April 8, 1898.

There were present at the Conference—For Louisiana: Dr. Edmond Souchon, President of the State Board; Dr. John J. Castellanos, of said Board; Dr. C. P Wilkinson, of New Orleans Quarantine Station.—For Mississippi: Dr. S. R. Dunn, Dr. H. H. Haralson, Dr. Fokes, of Biloxi; Dr. Bailey, of Ocean Springs.—For Alabama: Dr. W. H. Sanders, State Health Officer.—For South Carolina: Dr. H. B. Horlbeck, of Charleston.—For the United States Marine Hospital Service: Dr. H. R. Carter.—For the Railroads. Messrs. Owen, Van Vleck, and Fay, of the Southern Pacific; Messrs. Harvey and Curren, of the New Orleans & Northeastern; Mr. O. M. Dunn, of the Illinois Central; Mr. Charles Marshall, of the Louisville & Nashville, and Mr. N. S. Hoskins, of the Car Service Association.—For the Steamboats: Capt. Charles P. Truslow, President of the Steamboat Owners' Exchange; Capt. J. B. Woods and Capt. George H. Lord.

E. S.

*181*a*. The diagram following is taken from Mississippi Regulations:

ATLANTA CONVENTION

OF THE

SOUTH ATLANTIC AND GULF STATES.

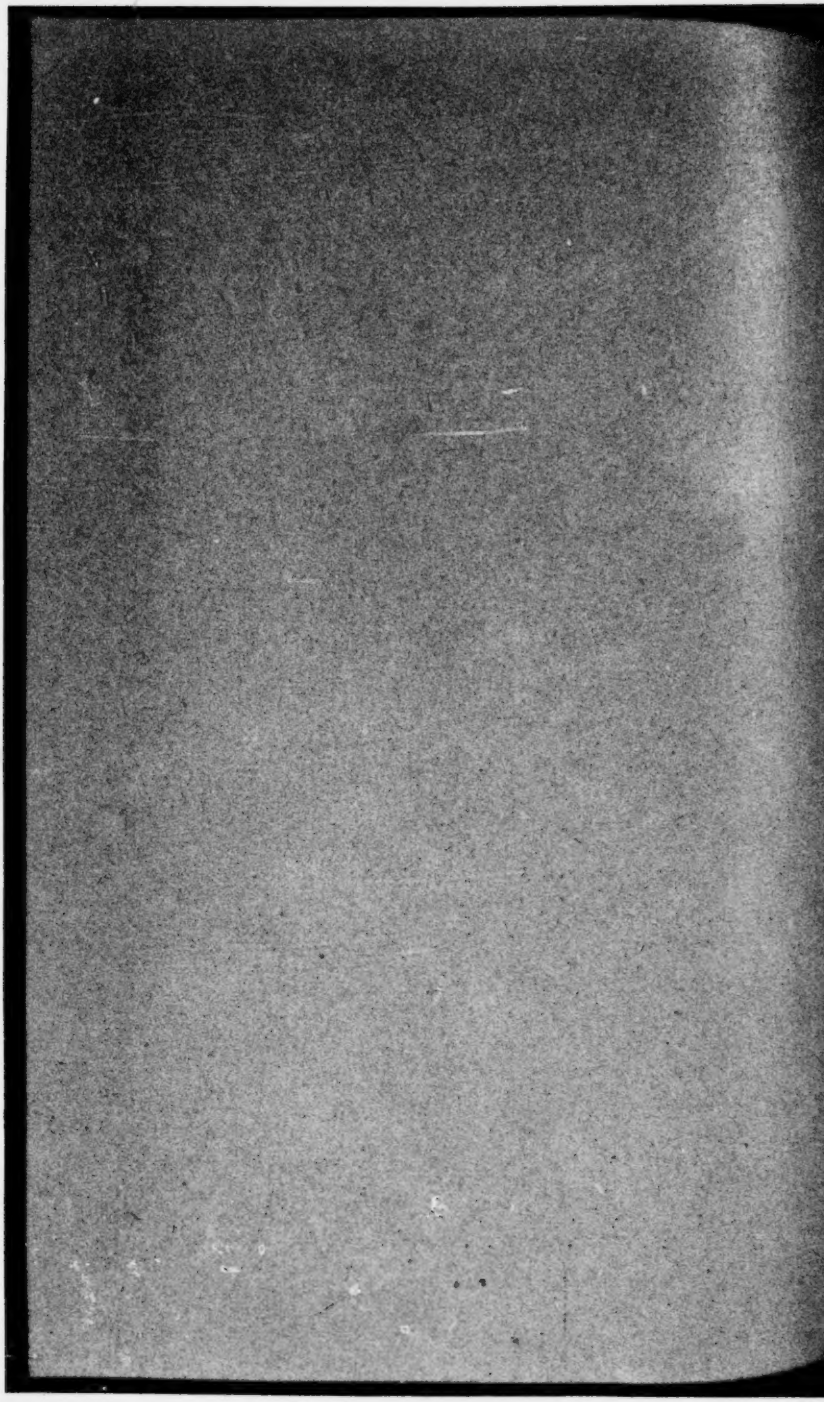
Uniform Regulations for the Management of Yellow Fever Epidemics.

UNANIMOUSLY ADOPTED AND RECOMMENDED TO THE PEOPLE,

APRIL 12TH, 1898.

REVISED AT A CONFERENCE HELD IN THE CITY OF NEW ORLEANS ON FEBRUARY 9, 1899.

NEW ORLEANS:
L. Graham & Son, Ltd., Printers, 307-311 Baronne St.
1899.



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CONTENTS.

ATLANTA CONVENTION

OF THE

SOUTH ATLANTIC AND GULF STATES.

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1. This convention was called in pursuance of the following resolution, adopted by the Quarantine Convention of the South Atlantic and Gulf States, held at Mobile, Ala., February 9, 1898.

2. **To Establish Uniformity of Quarantine Rules and Regulations in Certain States.**

3. *Resolved*, That it is the sense of this Convention of the States bordering on the South Atlantic and Gulf Coast, viz.: Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana and Texas, that they should, as soon as practicable, meet in conference and prepare a Code of Rules and Regulations for the purpose of controlling and preventing the spread of Yellow Fever and other Contagious and Infectious Diseases; said rules and regulations to be uniformly accepted and honored by the several Health Boards of the States mentioned; and further to adopt a system of pratique and health certificates to be used in times of epidemic, to be likewise honored by the several Health Boards of the States named.
4. The convention was called to order at 10 o'clock Tuesday morning in the ballroom of the Kimball House, by Mayor Collier. Rev. Dr. Landrum opened with prayer. Owing to the non-arrival of many delegates, the session adjourned until noon, after the appointment of a credential committee and a committee on permanent organization.
5. The report of the credential committee was received at the noon session, allowing all health and sanitary officers present, representing States, to vote, and allowing each State five votes.
6. On roll call the States of Virginia, South Carolina, Georgia, Florida, Alabama, Mississippi and Louisiana were found to be represented.
7. The following delegates were present:
8. Virginia—Dr. E. A. Waugh, Lynchburg; Dr. J. Jett McCormick, Norfolk.
9. South Carolina—Dr. H. B. Horlbeck, Charleston.
10. Georgia—Hon. C. A. Collier, Atlanta; Dr. J. F. Alexander, Atlanta; Dr. C. F. Benson, Atlanta; Dr. James B. Baird, Atlanta; Dr. Louis H. Jones, Atlanta; Dr. DeSaussure Ford, Augusta; Dr. T. C. Ticknor, Columbus; Dr. R. B. Barron, Macon; Hon. P. W. Meldrim, Savannah; Dr. Ed Brobston, Brunswick.
11. Florida—Dr. J. L. Horsey, Fernandina; Dr. R. L. Harris, Orlando.
12. Alabama—Dr. Rhett Goode, Dr. Glenn Andrews, Montgomery; Dr. J. W. Barclay, Birmingham; Dr. R. D. Murray, Mobile; Dr. Edward A. Neil, Selma.
13. Mississippi—Dr. H. H. Haralson, Biloxi; Dr. C. M. Murray, Ripley.
14. Louisiana—Dr. Edmond Souchon, New Orleans; Dr. C. P. Wilkinson, New Orleans; Dr. Quitman Kohnke, New Orleans; Dr. J. J. Scott, Shreveport; Dr. H. R. Carter, New Orleans.

15. Missouri—Dr. Sam Ayres, Kansas City.
16. United States Marine Hospital Service—Dr. H. R. Carter, Dr. R. D. Murray.
17. Railroads—Joseph M. Brown, Atlanta, Nashville, Chattanooga & St. Louis Railroad and Western & Atlantic; J. C. Smith, Atlanta & West Point, Atlanta; J. A. Sullivan, Kansas City, Memphis & Birmingham; D. D. Curran, New Orleans & Northeastern Railroad; J. S. B. Thompson, Southern Railway, Atlanta; Dr. Samuel Ayres, Kansas City, Pittsburg & Gulf Railroad.
18. The organization committee reported the following officers, who were unanimously elected: President, Dr. H. B. Horlbeck, Charleston, S. C.; vice presidents, Dr. E. A. Waugh, Virginia; Dr. DeSaussure Ford, Georgia; Dr. R. L. Harris, Florida; Dr. Rhett Goode, Alabama; Dr. Murry, Mississippi; Dr. J. J. Scott, Louisiana; secretary, Mr. J. F. Weissinger, Atlanta.
19. President Horlbeck took the chair and appointed the following Committee on Plans and Resolutions: Dr. Souchon, Louisiana, chairman; Dr. Waugh, Virginia; Dr. Alexander, Georgia; Dr. Horsey, Florida; Dr. Goode, Alabama, and Dr. Haralson, Mississippi.
20. Resolutions relative to the regulation of quarantine were then introduced by Dr. Souchon, by Dr. Carter, the representative of the United States Marine Hospital Service, and by Dr. Wilkinson. All the resolutions were referred to the Committee on Plans and Resolutions, with which Dr. Wilkinson and Dr. Carter were invited to sit.
21. The Convention then adjourned until 4 o'clock in the afternoon to await the report of the resolutions committee, which went into session at once to agree on a composite report from the resolutions introduced.

*22. **Revising Conference in New Orleans.**

*23*a*. On February 9, 1899, a Conference of representatives of the Gulf States was held in the city of New Orleans for the purpose of revising the Atlanta Regulations, in the light of the experience of the last year.

*23*b*. Dr. H. R. Carter, of the United States Marine Hospital Service, suggested or accepted and recommended the proposed changes, which, after adoption by the New Orleans Conference, makes the Atlanta Regulations now read as below:

*3c. Each amended paragraph is marked by a star.

*24. Those present were:

*25. Texas.—Houston Board of Health—Dr. J. W. Scott, president; Dr. J. Lavendoce, Dr. R. T. Morris, Dr. W. M. Brumby, Dr. Hiram A. Wood. Galveston Board of Health—Dr. J. F. Y. Paine, Dr. J. D. Skinner. South Texas Medical Association—Dr. B. F. Smart, Dr. J. R. Stuart, Houston; Dr. R. H. Harrison, Columbus; Dr. Frank B. King, Dr. O. L. Norsworthy.

*26. Mississippi.—Waveland Board of Health—John A. Rawlins, Peter Helwege, L. H. Fairchild, R. Attaway, John J. Barr, Jules Mazerat. Pass Christian Board of Health—Jas. H. Maury, L. C. Fallon, C. A. Pardue, O. L. Putnam, Wm. T. Hardie. Bay St. Louis Board of Health—Aug. Keller, secretary.

*27. Alabama,—Mobile Board of Health—Dr. Rhett Goode, city health officer. Mobile Chamber of Commerce—A. S. Benn, president; E. E. England, secretary; H. Pillows, C. J. Clarke.

*28. Louisiana.—State Board of Health—President, Edmond Souchon, M. D.; secretary, G. Farrar Patton; Dr. R. L. Randolph and Dr. C. A. Gaudet, New Orleans Board of Health—President Quitman Kohnke, M. D. New

Orleans Board of Trade—Jos. Kohn, Gus Lehman, Sr. New Orleans Fruit and Produce Exchange—Charles Roth. Bureau of Freight and Transportation—Ben. H. Helm. New Orleans Steamboat Exchange—Chas. P. Truslow, Geo. H. Lord. New Iberia Board of Health—President A. Duperrier, M. D. St. Mary Parish Board of Health—President C. M. Smith, M. D.; Dr. D. N. Foster. The Railroads—Superintendent W. F. Owen, Southern Pacific. New Orleans—J. G. Kostmayer, Dr. G. Devron, I. W. Ashner.

*29. Mexico.—Vera Cruz—Dr. J. J. Burroughs.

*30. Marine Hospital Service.—Dr. Jas. A. White, Dr. Jas. A. Nydegger.

*31*a*. Dr. J. W. Scott, of Houston, Tex., was elected president. A committee on publications was appointed by the president, consisting of Dr. Souchon, Dr. White, Mr. Kohn and Dr. Wood.

31*b*. All the amendments were unanimously adopted and recommended to the people.

32. REGULATIONS FOR THE GOVERNMENT OF DISINFECTION AND DETENTION STATIONS OR CAMPS DURING THE EXISTENCE OF YELLOW FEVER AT ANY POINT WITHIN OUR BORDERS.

33. General Principles.

34. The regulations are somewhat numerous and exacting, but it is by the strict observance of like regulations that the art of Surgery has accomplished its wonders.

35. In case yellow fever should occur at any point of the Southern States, the most effective method to prevent shotgun quarantines and their disastrous effects upon Commerce is to establish Disinfecting and Detention Stations or Camps on the lines of travel by rail or boat.

36. It is by practical actions that the people will be reassured and not by agreements and persuasion based on words, assurances or legislation. To show the people that all possible care is effectually taken to prevent yellow fever from reaching them is the best and only argument they should yield to.

37. Parties coming from localities infected by yellow fever should not be allowed to enter quarantine localities capable of being infected by yellow fever, unless they have had their persons, clothing, baggage, etc., disinfected as needed, and unless they have remained at the station ten days after such thorough disinfection, and places holding communication with localities under insufficient restrictions may themselves be held in quarantine.

38. The Stations or Camps will be erected by the United States Marine Hospital Service.

39. They will be operated by the United States Marine Hospital Service.

40. The Marine Hospital Service will also be requested at an immediate date to prepare at least four disinfecting plants, including four cylinders for furnishing steam disinfection.

41. Medical Inspectors from interested States and localities will be admitted to the Stations to witness that the regulations are thoroughly complied with.

42. Regulations Applying to Persons, Clothing and Baggage.

*43. Persons arriving at the Disinfecting Stations will have their clothing and effects disinfected.

44. The clothes and baggage will be disinfected by moist steam under pressure.
45. All articles requiring to be subjected to moist steam shall remain in the steam chamber at a continuous temperature of 212 to 220 degrees Fahrenheit for thirty minutes.
*46. Articles not amenable to this treatment shall be disinfected as hereinafter provided.
47. The persons will then be placed in the Department of the Disinfected.
48. They shall be inspected daily.
49. Upon the appearance of any tendency or symptoms whatever of yellow fever, they shall at once be placed in a suitable isolated locality.
50. If they develop a case, they shall be placed in the hospital of the Station.
51. The persons will remain at the Station ten days.
52. Persons thus detained will be given a certificate to the effect that disinfection has been practised and detention of ten days enforced, signed by the Resident Officer of the United States Marine Hospital Service.
53. Well authenticated immunes will not be detained, but will be disinfected.
54. Then the person should be received everywhere and by everybody as being incapable of conveying infection.

55. **Regulations Governing Freight.**

56. Articles should not be shipped from dwellings, nor from places continguous to dwellings, without being disinfected.
*57. All articles shall be new, clean and dry.

*58*a*. Special Conditions of Infection.

*58*b*. (*a*) When fever exists in a sporadic form.
Merchandise under the above conditions can be shipped.
(*b*) When fever is more than sporadic, but not general.
Merchandise of the above character may be shipped from the wholesale district of a city, except such as from its liability to infection would be especially apt to conserve it, such as fruit, vegetables in open crates, straw, sawdust, excelsior and similar articles used for packing.
These articles can be shipped only if they have been preserved from possible exposure to infection or have been disinfected.

*59. Class I.

The following articles should be admitted without disinfection or restrictions of any sort:
(*a*) All new and dry material, unpacked, such as lumber, machinery, brick, tiling, bar and sheet iron, tin, steel, agricultural implements—no part of which is textile; iron ties, stoves, saddlery, not upholstered; rubber belting, rubber hose, linoleum, wagons, new trunks, hardware without packing, lime, ice and salt in bulk, turpentine, rosin, stone, gravel, coal, coke, cement, grain in carloads, cooperage, oysters and fish packed in ice, and other articles packed in ice properly refrigerated.
(*b*) Original packages in clean and smooth wooden or metallic containers not broken or packed in an infected locality.
(*c*) Articles in such containers, put up and handled exclusively in the wholesale district, which from their nature or mode of packing are incapable of carry-

*181*b*. Letter from Dr. H. R. Carter, Surgeon United States Marine Hospital Service.

OFFICE OF MEDICAL OFFICER IN COMMAND,
MARINE HOSPITAL SERVICE,
NEW ORLEANS, LA., January 24, 1889.

Dr. Edmond Souchon, President Louisiana Board of Health, New Orleans, La.:

DEAR DOCTOR—I am very sorry that I will not be able to attend the Conference on February 9, as I am called off and leave to-day.

Enclosed please find a little paper I had hoped to present of "General Principles," on which quarantine measures, I think, ought to depend, and in proportion as they are founded on these principles they have, in my experience, been efficient and non-obstructive.

I think they will be found to have a bearing on the work which the Convention is likely to consider, and thus have more than theoretical interest.

If you think it will be of any service to the Convention, I beg that you will have it presented as written, either by the representative of the service, if he desire it, or yourself.

Very sincerely yours,

H. R. CARTER, *Surgeon M. H. S.*

182. **GENERAL PRINCIPLES.**

183. **A. Purpose of Quarantine.**

(*a*) The purpose of quarantine restrictions is to prevent the introduction of infectious or contagious diseases.

(*b*) They should be sufficient for this purpose, and none save such as are necessary for this purpose should be imposed.

(*c*) In cases of doubt, the doubt should be thrown to the side of safety rather than of risk; but, in deciding on any measure, a balance should also be preserved between the risk which is obviated by its adoption and the loss which the measure entails.

(*d*) Measures, which although safe in theory, yet are so difficult of execution that there is serious doubt that they will be carried out efficiently, can not be depended on, and privileges depending on restrictions of this kind should not be allowed.

184. **B. Establishment of Foci of Yellow Fever.**

(*a*) A focus of inspection can be established only in an infectable place. To places in which such foci can not be established, whether from location (latitude, altitude or other conditions), time of year (after frost), or from other causes, yellow fever is not an infectious disease. Such places need not quarantine.

(*b*) The same result may be obtained—*i. e.*, not establishing a focus—by antiseptic treatment of cases of yellow fever.

(*c*) It is not generally to be depended on save in hospitals or tents.

185. **C. Conveyance of Yellow Fever.**

(*a*) Yellow fever is usually conveyed from infected places by persons and personal effects, the latter already infected and the former having the fever in the stage of incubation. The former is by far the most common medium of conveyance.

(*b*) This implies that the persons or things have been exposed to infection.

(*c*) Other things besides personal effects, such as articles of merchandise, may of course, convey infection, but in point of fact seldom do.*

186. The risk of persons depends on three factors:

(*a*) That they have been exposed to infection.

(*b*) That they are susceptible to infection, if exposed.

(*c*) That the period of incubation of the disease has not passed since last exposure.

187. If any one of these factors is lacking, no risk can be conveyed by the person.

188. The risk from the effects of persons depends on:

(*a*) Whether they have been exposed to infection.†

(*b*) Whether they have retained the infection to which they have been exposed—*i. e.*, they have not been disinfected chemically or by aeration.‡

189. Persons and personal effects should be considered together.

190. Merchandise other than personal effects, shipped from a place in which foci of infection of yellow fever exist, is dangerous in proportion to a combination of three factors:

(*a*) Its exposure to infection.

(*b*) Its ability to receive and convey it.

(*c*) The measures adopted to free it from infection, if exposed to it.

191. Both of the first two factors must exist to render the merchandise dangerous in the first place, and even then it may be freed from danger by proper measures to free it from infection.

192. The first depends on:

(*a*) The degree of infection in the place.

(*b*) The place of storage and handling the merchandise.

193. Until the infection of a city become general, the risk of infection is confined to residences and places contiguous to them, and in the business portion of a city is rare, the wholesale business house being practically free from it.

194. Reference is here had only to a city in which there is such a difference in residence and business portion.

195. Goods from the wholesale district of such a town, unless the infection of the place be very general, are little apt to be exposed to infection.

196. Should the infection become very general, the wholesale district may be invaded.

197. The second depends on the nature of the surface of the merchandise.

198. Smooth, clean, dry, non-absorbing surfaces will scarcely, even if exposed to infection, convey it.

199. The third, on the process of disinfection to which the merchandise has been subjected.

This requires no explanation.

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*The writer has long held that if much of the energy and care and money in excess of what was needed which was spent in guarding against infection from merchandise and mail were given to that from persons and personal effects the sanitary result would be decidedly better.

†On account of the nature of their surfaces, no question is raised as to the reception of infection by personal effects.

‡It is held, I think, by all who have had much experience in this matter that ordinary wearing apparel worn through the sun and air for any considerable time is thus freed from the infection of yellow fever.

D. Risk of Conveyance.

200. The risk from communication with a place in which foci of yellow fever infection exist is, among other things, dependent on and proportional to:

(*a*) Degree of infection.

201. Where the degree is small, the infection is, in general, confined to a small proportion of the residences and the risk of conveying infection is then confined to persons and things which have been in this quarter.

(*b*) Measures taken in and adjacent to this place.

202. If none of the persons exposed to infected and infected articles be allowed to leave, there is no risk, and in proportion as this is done the risk diminishes.

203. The nature of the quarantine restrictions—*i. e.*, the nature of the communication allowed—should be modified by the risk and thus depends partly on the above conditions.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1899.

Original. No. **6**

STATE OF LOUISIANA

vs.

THE STATE OF TEXAS ET ALS.

Demurrers of State of Texas to Bill of Complaint.

Now comes the State of Texas, by her attorney general, Thomas S. Smith, and the defendants Joseph D. Sayers, governor of said State, and W. F. Blunt, health officer of said State, and demur to the bill of complaint filed herein and say that the same is insufficient in law for the following reasons, to wit:

First. That this court has no jurisdiction of either the parties to or of the subject-matter of this suit, because it appears from the face of said bill that the matters complained of do not constitute, within the meaning of the Constitution of the United States, *any controversy* between the States of Louisiana and Texas.

Second. Because the allegations of said bill show that the only issues presented by said bill arise between the State of Texas or her officers and certain persons in the city of New Orleans, in the State of Louisiana, who are engaged in interstate commerce, and which do not in any manner concern the State of Louisiana as a corporate body or State.

Third. Because said bill shows upon its face that this suit is in reality for and on behalf of certain individuals engaged in interstate commerce, and while the suit is attempted to be prosecuted for and in the name of the State of Louisiana, said State is in effect loaning its name to said individuals and is only a nominal party, the real parties at interest being said individuals in the said city of New Orleans who are engaged in interstate commerce.

Fourth. Because it appears from the face of said bill that the State of Louisiana, in her right of sovereignty, is seeking to maintain this suit for the redress of the supposed wrongs of her citizens in regard to interstate commerce, while under the Constitution and laws the said State possesses no such sovereignty as empowers her to bring an original suit in this court for such purpose.

Fifth. Because it appears from the face of said bill that no property right of the State of Louisiana is in any manner affected by the quarantine complained of, nor is any such property right involved in this suit as would give this court original jurisdiction of this cause. Wherefore defendants pray judgment of the sufficiency of said bill, and as to whether this court will take further cognizance of this cause, and that they be dismissed hence with their costs.

THOMAS S. SMITH,
Attorney General of the State of Texas, and
ROBERT HAMILTON WARD,
Assistant Attorney General of the State of Texas,
Attorneys for said Defendants.

I, Thomas S. Smith, attorney general of the State of Texas and attorney for said defendants, upon my oath state that the above and foregoing demurrers are not interposed for delay.

THOMAS S. SMITH,
Attorney General of State of Texas.

Sworn to and subscribed before me this October 24th, 1889.

[SEAL.] JAMES D. MAHER,
Notary Public for District of Columbia.

I, Thomas S. Smith, attorney general of the State of Texas and attorney for said defendants, certify that the above and foregoing demurrers are, in my opinion, well taken in law.

THOMAS S. SMITH,
Attorney General of State of Texas and Attorney for said Defendants.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1899.

Original No. —.

STATE OF LOUISIANA

vs.

THE STATE OF TEXAS ET ALS.

Now comes the State of Texas, by her attorney general, T. S. Smith, for the sole and only purpose of presenting to this honorable court her objections to and protest against the granting by this court to complainant herein leave to file the bill of complaint exhibited to the court, and for no other purpose, the grounds of said objection and protest being, *first*, that this court has no jurisdiction, of either the parties to or of the subject-matter of this suit, because it appears from the face of said bill that the matters complained of do not constitute, within the meaning of the Constitution of the United States, any controversy between the States of Louisiana and Texas.

Second. Because the allegations of said bill show that the only issues presented by said bill arise between the State of

Texas or her officers and certain persons in the city of New Orleans, in the State of Louisiana, and who are engaged in interstate commerce, which do not in any manner concern the State of Louisiana as a corporate body or State.

Third. Because said bill shows upon its face that this suit is in reality for and on behalf of certain individuals engaged in interstate commerce, and while the suit is attempted to be prosecuted for and in the name of the State of Louisiana, said State is only in effect loaning its name to said individuals and is only a nominal party, the real parties at interest being said individuals in the said city of New Orleans who are engaged in interstate commerce.

Fourth. That if the allegations of said bill be true, then it appears that as to the matters complained of the said William F. Blunt, health officer of the State of Texas, is not acting for and on behalf of the State of Texas under and by virtue of any law of the State, but that all of his acts are in excess of his power and authority as an officer of Texas, not binding on the State of Texas, and that as to such illegal and unauthorized acts of said William F. Blunt the said State of Texas cannot be held responsible, and therefore no such possible controversy between the States of Louisiana and Texas is shown as would give this court jurisdiction of this suit.

Fifth. That this court being without jurisdiction of the parties or of the subject-matter of this suit, to permit the complainant to file this bill and to force the State of Texas and her officers to appear herein would only subject the

State of Texas to great expense and annoyance without any benefit or advantage to complainant.

Wherefore the State of Texas most respectfully prays that this honorable court will refuse to grant leave to complainant to file said bill of complainant or to prosecute said suit against her.

T. S. SMITH,
Attorney General of the State of Texas.
R. H. WARD,
Assistant Attorney General of Texas.

In support of the above objections, we respectfully refer to the case of New Hampshire *vs.* Louisiana and others and New York *vs.* Louisiana and others, 108 U. S., 89, 90, 91.

T. S. SMITH,
Attorney General of Texas, and
R. H. WARD,
Assistant Attorney General of Texas.

No. 6 Orig.

Brief of Cunningham, Farrar, Jonas, Kruttschnitt & McCaleb for Complainant (on mo.)

Supreme Court of the United States.

OCTOBER TERM, 1899.

Filed Oct. 23, 1899.

Original. No.

STATE OF LOUISIANA

vs.

STATE OF TEXAS ET ALS.

Brief for Complainant on Motion for Leave to File Bill.

MILTON J. CUNNINGHAM,
Attorney General of Louisiana.
EDGAR H. FARRAR,
BENJAMIN F. JONAS,
ERNEST B. KRUTTSCHNITT,
E. HOWARD MCCALEB,
Counsel.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 10-23-'99

IN THE

Supreme Court of the United States

OCTOBER TERM, 1899.

Original, No.

STATE OF LOUISIANA

vs.

STATE OF TEXAS ET ALS.

Brief for Complainant on Motion for Leave to File Bill.

I.

This bill is presented by the State of Louisiana against the State of Texas, Joseph D Sayers, governor, and William F. Blunt, health officer.

The substance of its averments is that Blunt, the health officer, under the extensive powers granted him by the Texas statutes, did on September 1, 1899, with the consent of the governor, under the pretense of establishing a quarantine against yellow fever, lay an absolute embargo upon interstate commerce between the city of New Orleans—a city which contains more than one-fourth of the population

and contributes more than five-eighths of the revenue of the State of Louisiana—and the State of Texas; that this embargo is not levied in good faith to protect the health of the people of Texas, but to build up the commerce of her cities at the expense of the competitive interstate commerce between New Orleans and Texas; that this want of good faith appears in the fact that these same officers permit commerce at all times between Texas and the permanently infected ports of Mexico, Central and South America, and Cuba, and provide reasonable rules and regulations for the detention, inspection, and disinfection of the articles and vehicles of such commerce; that absolute prohibition of commercial intercourse in not necessary as a health measure, and that this fact is recognized as to their maritime quarantine by the Texas health authorities, by all other health officials, and by all persons acquainted with the principles of modern sanitary science; that a similar embargo was put on interstate commerce between New Orleans and other points in Louisiana and the State of Texas in 1897, in 1898, and for nine days in May, 1899; that it is the fixed policy and intention of the State of Texas and her officials to establish such an embargo whenever they have the slightest excuse, and to maintain them as long as they have a pretext; that such embargo is enforced by armed guards placed on all of the highways of commerce, acting under the authority of the State of Texas; that the effect of such embargoes is to destroy the interstate trade and commerce of the State of Louisiana and of her cities, ports, and citizens with the State of Texas, to impoverish her citizens, to reduce her taxable values, to diminish her revenues, to lessen the value of her public lands, to decrease immigration, and to deprive her citizens of their rights and privileges under the Constitution of the United States; that such embargoes are in violation of the Constitution of the United States, and particularly the

clause thereof granting the Congress exclusive power to regulate interstate commerce.

The prayer of the bill is for an injunction to restrain the particular embargo set up on September 1, 1899, and now in force, and to restrain all the defendants from hereafter, in accordance with their fixed and declared policy, from establishing or maintaining any such embargo, and for a decree adjudging that the State of Texas and her health officers have no such power to prohibit interstate commerce between the State of Louisiana and any part thereof and the State of Texas.

As the wrong is immediate and continuing, a preliminary injunction is asked for, and notice of intention to apply for such an order was given on October 8th to all the defendants.

II.

It is objected that this court is without jurisdiction of this cause.

Article III, section 1, of the Constitution of the United States declares:

"The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish."

Section 2 of the same article says:

"The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made, or which shall be made under their authority; * * * to controversies between two or more States, between a State and citizens of another State, etc. * * * In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction."

As between the State of Louisiana and the State of Texas, this cause presents a "controversy between two States:" as

between the State of Louisiana and Joseph D. Sayers, governor, and William F. Blunt, health officer, both citizens of the State of Texas, it presents a controversy "between a State and citizens of another State." In either situation it is a case in which a "State is a party."

As regards the subject-matter, it is a case in equity arising under the Constitution and laws of the United States.

The State of Texas has granted autocratic and unlimited powers to her governor and health officer in the matter of quarantine.

Under the pretense of exercising such power, they have declared commercial war against the principal port of the State of Louisiana, the city of New Orleans, the second greatest exporting port of this continent. They have blocked every avenue of commerce with armed men, who board interstate trains and absolutely prevent the transmission of any article of merchandise or commerce coming from that city and bound for the State of Texas. They do not stop these articles of commerce for the purpose of inspection or purification. They prohibit their carriage, whether infected or not, whether capable of carrying infection or not.

The rights of thousands of the citizens of Louisiana are struck down by this action. Their trade and commerce is taken from them and transferred to rivals in the State of Texas. They and the State are materially injured thereby. They are impoverished; their property lessened in value; the volume of their business is diminished; they therefore pay less taxes and less licenses, which are calculated directly on their gross sales, and the revenues of the State are diminished. The restriction of business one way restricts it the other. Witness the enormous decrease in the cotton exports from Texas through New Orleans, averred in the bill as one of the consequences of this embargo.

In the second place, this embargo is a gross invasion of the constitutional privileges and immunities of her citizens guaranteed by article IV, section 2, of the Constitution of

the United States, giving them free ingress to and egress from the State of Texas and the enjoyment therein of the privileges of trade and commerce upon an equality with the citizens of Texas.

Where is the remedy for this? The State of Louisiana must have sovereignty enough left to protect her own revenues and the rights of her citizens. She cannot as a State of this Union make war on the State of Texas. She cannot act beyond her own borders. She cannot invade the State of Texas with armed men to protect her interstate commerce from forcible detention. She must appeal, and she has appealed, to that great tribunal established in the Constitution of the United States, with original and plenary jurisdiction to hear and determine "controversies between two or more States" and "between a State and citizens of another State."

The reasons for this jurisdiction are set forth in the Federalist, No. LXXX.

It must be as broad as the jurisdiction granted to Congress under the articles of confederation, which covered, "all disputes and differences now subsisting, or that hereafter may arise between two or more States concerning boundary, jurisdiction, *or any other cause whatever*" (Art. X of Articles of Confederation). The clumsy tribunal provided for in that article to be set up by Congress to settle such controversies was dependent upon the will of Congress. If it should refuse to organize the tribunal, the controversy could not be settled. When the people drew together into the "more perfect union" of the Constitution this great function was entrusted to the Supreme Court of the United States, and was placed beyond the control or limitation of legislative authority.

This court ruled in Rhode Island *vs.* Massachusetts, 12 Peters, p. 719, that the original jurisdiction of the Supreme Court of the United States in a controversy between two

States was as broad as that given to Congress under the articles of confederation.

Speaking on this subject, the court said:

"If in this state of things it was deemed indispensable to create a special judicial power, for the sole and express purpose of finally settling all disputes concerning boundary, arise how they might, when this power was plenary, its judgment conclusive in the right, while the other powers delegated to Congress were mere shadowy forms, one conclusion is at least inevitable, that the Constitution, which emanated directly from the people, in conventions in the several States, could not have been intended to give to the judicial power a less extended jurisdiction, or less efficient means of final action, than the articles of confederation, adopted by the mere legislative power of the States, had given to a special tribunal appointed by Congress, whose members were the mere creatures and representatives of State legislatures, appointed by them, without any action by the people of the State. This court exists by a direct grant from the people of their judicial power; it is exercised by their authority, as their agent, selected by themselves for the purposes specified; the people of the States as they respectively became parties to the Constitution, gave to the judicial power of the United States jurisdiction over themselves, controversies between States, between citizens of the same or different States, claiming lands under conflicting grants within disputed territory."

Mr. Hamilton, discussing this jurisdiction in the Federalist, No. LXXX, said:

"It seems scarcely to admit of controversy, that the judiciary authority of the Union ought to extend to these several descriptions of cases: 1st, to all those which arise out of the laws of the United States, passed in pursuance of their just and constitutional powers of legislation; 2d, to all those which concern the execution of the provisions expressly contained in the articles of union; 3d, to all those in which the United States are a party; 4th, to all those which involve the peace of the Confederacy, whether they relate to

the intercourse between the United States and foreign nations, or to that between the States themselves," etc.

* * * * * * *

"The power of determining causes between two States, between one State and the citizens of another, and between the citizens of different States, is perhaps not less essential to the peace of the Union than that which has just been examined. History gives us a horrid picture of the dissensions and private wars, which distracted and desolated Germany, prior to the institution of the *Imperial Chamber* by Maximilian, towards the close of the fifteenth century; and informs us at the same time, of the vast influence of that institution in appeasing the disorders and establishing the tranquillity of the Empire. This was a court invested with authority to decide finally all differences among the members of the Germanic body.

"A method of terminating territorial disputes between the States, under the authority of the Federal head, was not unattended to even in the imperfect system by which they have been hitherto held together.

"But there are other sources, besides interfering claims of boundary, from which bickerings and animosities may spring up among the members of the Union. To some of these we have been witnesses in the course of our past experience. It will readily be conjectured that I allude to the fraudulent laws which have been passed in too many of the States, and though the proposed Constitution establishes particular guards against the repetition of those instances which have heretofore made their appearance, yet it is warrantable to apprehend that the point which produced them will assume new shapes that could not be foreseen nor specifically provided against. Whatever practices may have a tendency to disturb the harmony of the States are proper objects of Federal superintendence and control."

The words "controversies between two or more States," used in the Constitution, cover every right of persons and property of a civil nature that can be made the subject of judicial cognizance.

In Rhode Island *vs.* Massachusetts (*supra*, p. 721) the court said:

"Though the Constitution does not in terms extend the judicial power to all controversies between two or more States, *yet it in terms excludes none, whatever may be their nature or subject.*"

In Osborne *vs.* Bank of the U. S., 9 Wheaton, 738, 821, the court said:

"Original jurisdiction, so far as the Constitution gives a rule, is coextensive with the judicial power. We find in the Constitution no prohibition to its exercise in every case in which the judicial power can be exercised."

The extent of the judicial power is as broad as all the other powers granted in the Constitution.

Chief Justice Marshall said in Cohens *vs.* Virginia, 6 Peters, p. 384, that if any proposition might be considered a political axiom, this might be considered one: "that the judicial power of every well-constituted government must be coextensive with the legislative, and must be capable of deciding every judicial question which grows out of the Constitution and laws."

Alexander Hamilton makes the same declaration in almost the same words in the number of the Federalist above quoted.

Equally broad and untrammeled is the grant of judicial power over "all cases in law and in equity" arising under the Constitution and the laws and treaties of the United States, whoever may be the parties thereto.

In Cohens *vs.* Virginia, 6 Peters, 382, Chief Justice Marshall said:

"The powers of the Union on the great subjects of war, peace, and commerce, and on many others, are in themselves limitations of the sovereignty of the States; but, in addition to these, the sovereignty of the States is surrendered in many instances where the surrender can only operate to the benefit of the people, and where, perhaps, no other power is conferred on Congress than a conservative power to maintain the principles established in the Consti-

tution. The maintenance of these principles in their purity is certainly among the great duties of the Government. One of the instruments by which this duty may be peaceably performed is the judicial department. It is authorized to decide all cases of every description arising under the Constitution or laws of the United States. From this general grant of jurisdiction no exception is made of those cases in which a State may be a party. When we consider the situation of the Government of the Union and of a State in relation to each other; the nature of our Constitution; the subordination of the State governments to that Constitution; the great purpose for which jurisdiction over all cases arising under the Constitution and laws of the United States, is confided to the judicial department; are we at liberty to insert in this general grant, an exception of those cases in which a State may be a party? Will the spirit of the Constitution justify this attempt to control its words? We think it will not. We think a case arising under the Constitution or laws of the United States is cognizable in the courts of the Union, whoever may be the parties to that case."

It is now well settled that where a State is a party this court will not take jurisdiction in three classes of cases:

1. Where there is nothing but a political question involved.

Two cases illustrate this proposition: State of Mississippi *vs.* Johnson, 4 Wall., 476, and State of Georgia *vs.* Stanton, 6 Wall., p. 50.

The first case was a bill by the State of Mississippi against Andrew Johnson, President of the United States, seeking to restrain him, as President, from enforcing the acts of Congress known as the reconstruction laws. The court refused to entertain it because they "were fully satisfied that this court has no jurisdiction of a bill to enjoin the President in the performance of his official duties."

The second case was a bill by the State of Georgia against Stanton, Secretary of War; Grant, general of the U. S.

Army, and Pope, major general of the U. S. Army, to restrain the execution of the reconstruction acts, which had been passed over the President's veto. The court held that the case presented a political and not a judicial question, and that it had "no jurisdiction over the subject-matter presented in the bill."

The case of Cherokee Nation *vs.* Ga., 5 Peters, p. 1, is sometimes quoted as a case involving a political question—*i. e.*, the right to restrain by injunction the execution of certain laws of the State of Georgia, but the court, having refused jurisdiction on the ground that the Cherokee nation was neither a State nor a foreign nation, expressed no opinion on the other question.

One of the justices in a separate opinion declared that the question presented was political; but Mr. Justice Thompson, with whom Mr. Justice Story concurred, discussed the whole case, and, disagreeing with the majority as to the status of the Cherokee nation, concluded that the case did not present a political question, and that the writ of injunction ought to issue.

The case of Kentucky *vs.* Dennison, 24 How., p. 66, is also sometimes referred to as a case where this court refused to take jurisdiction because the question presented was political, but a critical examination of it will not bear out this contention.

In that case the State of Kentucky applied for a mandamus on the governor of the State of Ohio, commanding him to cause Willis Lago, a fugitive from justice, to be delivered up to be removed to the State of Kentucky, having jurisdiction of the crime with which he was charged. Objection was made to the jurisdiction of the court and to its power to issue a writ of mandamus.

The court maintained its jurisdiction and held that mandamus was the proper remedy. It further held that it was the duty of the governor of Ohio to deliver up Lago, but it refused to issue the mandamus upon the sole ground

that "if the governor of Ohio refuses to discharge this duty there is no power delegated to the General Government, either through the judicial department or any other department, to use any coercive measures to compel him" (pp. 104–110).

The ground of this decision we do not believe would now prevail. It was rendered at a time when there was a widespread opinion in the United States, shared in even by the then President and the Chief Justice, who was the organ of the court, that the United States had no power to coerce a State. That question has been thoroughly settled by the power of the sword and by the acquiescence of those who ever questioned or doubted the power.

If the court had jurisdiction of the case, which it declared it had, and the writ of mandamus was the writ appropriate to the relief asked, and the court declared it was, and the duty to be enforced by the writ was one which the governor of Ohio was constitutionally bound to perform, and the court declared him to be so obligated, then it followed, as night follows day, that the court had the power to compel obedience to the writ.

Another case, which illustrates the point that a political is not a judicial question, is that of Luther *vs.* Borden, 7 How., p. —.

The court refused to decide which of two governments was the legal government in Rhode Island and upheld the acts of that government which had been recognized by the executive authority of the United States.

2d. Where the action is not a civil case, but one for the recovery of a penalty imposed by the municipal laws of the complaining State, which have of course no extraterritorial operation and which therefore the courts of no other sovereign will enforce.

This proposition is illustrated by the case of the State of Wisconsin *vs.* Pelican Ins. Co., 127 U. S., p. 265. In this case Mr. Justice Gray reviews all the cases theretofore decided by this court where a State was a party, and then said:

"The cases heretofore decided by this court in the exercise of its original jurisdiction have been referred to, *not as fixing the outermost limit of that jurisdiction*, but as showing that the jurisdiction has never been exercised or even invoked in any case resembling the case at bar."

3d. Where a State attempts to create a controversy between two States by pretended and collusive transfers to itself of the money demands of its own citizens against another State.

This proposition is illustrated by the two cases of New Hampshire *vs.* Louisiana and New York *vs.* Louisiana, argued, decided, and reported together in 108 U. S., p. 76.

In these cases the court said:

"No one can look at the pleadings and testimony in these cases without being satisfied beyond all doubt that they were in legal effect commenced and are now prosecuted solely by the owners of the bonds and coupons. In New Hampshire, before the attorney general is authorized to begin a suit, the owner of the bond must deposit with him a sum of money sufficient to pay all costs and expenses. No compromise can be effected except with the consent of the owner of the claim. No money of the State can be expended in the proceeding, but all expenses must be borne by the owner, who may associate with the attorney general such counsel as he chooses, the State being in no way responsible for fees. All moneys collected are to be kept by the attorney general, as special trustee, separate and apart from the other moneys of the State, and paid over by him to the owner of the claim, after deducting all expenses incurred not before that time paid by the owner. The bill, although signed by the attorney general, is also signed and was evidently drawn by the same counsel who prosecuted the suits for the bondholders of Louisiana, and it is manifest

in many ways that both the State and the attorney general are only nominal actors in the proceeding. The bondholder, whoever he may be, was the promoter and is the manager of the suit. He pays the expenses, is the only one authorized to conclude a compromise, and if any money is ever collected, it must be paid to him without even passing through the form of getting into the treasury of the State."

If individuals had been involved on both sides of such a transaction, it would doubtless have been characterized as a fraud on the jurisdiction of the court; but the dignified character of the States involved required that the matter should be expressed euphuistically, and jurisdiction was denied on the ground that "one State cannot create a controversy with another State, within the meaning of the term as used in the judicial clause of the Constitution, by assuming the prosecution of debts owing by another State to its citizens."

III.

A mere inspection of the bill in this case shows that it does not fall into any of the three categories above defined.

Its object is twofold: 1st. To protect from injury her own ports, commerce, lands, and revenues. 2d. To protect from injury the commerce of her citizens and their rights of trade and intercourse guaranteed by the Constitution of the United States.

Both of these classes of rights are injured by the unlawful obstruction of the highways of interstate commerce, which obstruction partakes of the nature of a common public nuisance.

These obstructions are established and maintained by the officials of the State of Texas, either with or without her consent, acting under the color of a law of that State. If they are acting with her consent and assistance, as averred in the bill, then she is a necessary party on this record. If

they are acting without her consent and authority, then she must disclaim and repudiate them and go hence, leaving the case to stand as one between the State of Louisiana and citizens of the State of Texas, usurping authority to block the highways of interstate commerce.

The power of the Federal Government to enforce the Constitution and to protect interstate commerce from all forms of unlawful obstruction resides in the judicial as well as in the executive and in the legislative branches.

In the celebrated Debs case, 158 U. S., p. 581, this court said :

"It is curious to note the fact that in a large proportion of the cases in respect to interstate commerce brought to this court the question presented was of the validity of State legislation in its bearings upon interstate commerce, and the uniform course of decision has been to declare that it is not within the competency of a State to legislate in such a manner as to obstruct interstate commerce. If a State with its recognized powers of sovereignty is impotent to obstruct interstate commerce, can it be that any mere voluntary association of individuals within the limits of that State has a power which the State itself does not possess?

"As, under the Constitution, power over interstate commerce and the transportation of the mails is vested in the national Government, and Congress by virtue of such grant has assumed actual and direct control, it follows that the National Government may prevent any unlawfully and forcible interference therewith. But how shall this be accomplished? Doubtless it is within the competency of Congress to prescribe by legislation that any interference with these matters shall be offenses against the United States, and prosecuted and punished by indictment in the proper courts. But is that the only remedy? Have the vast interests of the nation in interstate commerce and in the transportation of the mails no other protection than lies in the possible punishment of those who interfere with it? To ask the question is to answer it. By article 3, section 2, clause 3, of the Federal Constitution it is provided :

"'The trial of all crimes except in cases of impeachment shall be by jury; and such trial shall be held in the State where the said crime shall have been committed.'

"If all the inhabitants of a State, or even a great body of them, should combine to obstruct interstate commerce or the transportation of the mails, prosecutions for such offenses had in such a community would be doomed in advance to failure, and if the certainty of such failure was known, and the National Government had no other way to enforce the freedom of interstate commerce and the transportation of the mails than by prosecution and punishment for interference therewith, the whole interests of the nation in these respects would be at the absolute mercy of a portion of the inhabitants of that single State.

"But there is no such impotency in the National Government. The entire strength of the nation may be used to enforce in any part of the land the full and free exercise of all rights entrusted by the Constitution to its care. The strong arm of the National Government may be put forth to brush away all obstructions to the freedom of interstate commerce or the transportation of the mails. If the emergency arises, the army of the nation and all its militia are at the service of the nation to compel obedience to its laws.

"But, passing to the second question, is there no other alternative than the use of force on the part of the executive authorities whenever obstructions arise to the freedom of interstate commerce or the transportation of the mails? Is the army the only instrument by which the rights of the public can be enforced and the peace of the nation preserved?"

The court then goes on to show that the judicial power of the Government may be invoked.

In answer to the plea that the Government had no interest in such a suit, the court said:

"Neither can it be doubted that the Government has such an interest in the subject-matter as enables it to appear as party plaintiff in this suit. It is said that equity only interferes for the protection of property, and that the Government has no property interest. 'A sufficient reply is that

the United States have a property in the mails, the protection of which was one of the purposes of this bill. * * *

"We do not care to place our decision upon this ground alone. Every government entrusted by the very terms of its being with powers and duties to be exercised and discharged for the general welfare, has a right to apply to its own courts for any proper assistance in the exercise of the one and the discharge of the other, and it is no sufficient answer to its appeal to one of those courts that it has no pecuniary interest in the matter."

The court then quotes the case of U. S. *vs.* San Jacinto Tin Co., 125 U. S., 273, which was an action by the Government to annul a patent for land, and The U. S. *vs.* Bell Telephone Co., 128 U. S., 315, which was an action by the Government to annul a patent for an invention, and proceeds:

"It is obvious from these decisions that while it is not the province of the Government to interfere in any mere matter of private controversy between individuals, or to use its great powers to enforce the rights of one against another, yet, whenever the wrongs complained of are such as affect the public at large, and are in respect of matters which by the Constitution are entrusted to the care of the nation, and concerning which the nation owes the duty to all the citizens of securing to them their common rights, then the mere fact that the Government has no pecuniary interest in the controversy is not sufficient to exclude it from the courts, or prevent it from taking measures therein to fully discharge those constitutional duties."

The court then proceeds to demonstrate the following propositions:

1st. That interstate commerce by railroads is the same as interstate commerce by navigable rivers, both being highways of such commerce, the one artificial, the other natural, and that the fullness of control of Congress exists in the one case as in the other.

2d. That it lies within the governmental power to remove all obstructions and hinderances from such highways of commerce.

3d. That such hinderances and obstructions amount to a public nuisance.

4th. That one remedy is by bill in equity in a court of chancery for an injunction to remove or restrain such obstructions.

5th. That the jurisdiction of courts to interfere in such matters by injunction is one recognized from ancient times and by indubitable authority.

Under the doctrine of this case, the State of Louisiana in her corporate capacity would have the undoubted right to proceed in her own courts to remove any unlawful obstruction of or interference with the highways of her interstate commerce or with her interstate commerce itself. Does her right become any the less when the acts done are beyond her borders and are committed by State officials, either with or without the consent of a State? Has she not the right as a member of this Union to appeal to the courts of the Union to enforce the conditions of the covenant by which she and her people and all the other States and their people are indissolubly bound together? Does not this case present a modern instance of "the fraudulent laws" spoken of in the quotation, made above from the Federalist, as giving rise to a controversy between two States, tending to endanger the peace of the nation, such as the judicial power of the United States was established for the purpose of determining?

1st. So far as concerns the right of the State to sue in this court for an injunction to prevent an obstruction or interference with a highway of interstate commerce, tending

to injure her revenues, ports, and commerce, it is settled by authority.

In the case of The State of Pennsylvania *vs.* The Wheeling Bridge Co., 13 Howard, this court enjoined the building of a bridge over the Ohio river fifty miles beyond the territory of Pennsylvania, being constructed under color of a statute of the State of Virginia.

The bridge was shown to be an obstruction to interstate commerce between the State of Pennsylvania and other States, and that such obstruction would tend to decrease the revenues of the State from certain highways of commerce constructed by the State of Pennsylvania within her own borders.

In South Carolina *vs.* Georgia, 93 U. S., p. 4, this court took jurisdiction of a bill filed by the State of South Carolina against the State of Georgia and others to enjoin them from obstructing the Savannah river, a highway of interstate commerce, on the ground that her interests and those of her citizens would be injuriously affected by such obstructions. The bill was dismissed because the works complained of were being prosecuted by the Federal Government.

In Wisconsin *vs.* Duluth, 96 U. S., 381, this court took jurisdiction of a bill filed by the State of Wisconsin against the city of Duluth, in Minnesota, to enjoin the obstruction and diversion of the waters of St. Louis river from their natural course, to the prejudice of the rights of the State of Wisconsin and of her citizens who had an interest in the continuance of the channel as an important highway for navigation and commerce in its natural and usual course.

The court dismissed the bill on its merits on the ground that the work sought to be enjoined had been authorized and inaugurated by the Congress under its lawful powers, who had appropriated public money to carry it out, and that therefore the court had no authority to prescribe the manner

in which the work should be conducted or to forbid its completion or to require the undoing of that which had been done.

On p. 382 the court says:

"Many very interesting questions have been argued, and ably argued, by counsel, which we have not found it necessary to decide. The counsel for defense deny that the State of Wisconsin has any such legal interest in the flow of waters in their natural course as authorizes her to maintain a suit for their diversion. It is argued that this court can take cognizance of no question which concerns alone the rights of a State in her political or sovereign character; that to sustain the suit she must have some proprietary interest which is affected by the defendant. This question has been raised and discussed in almost every case brought before us by a State in virtue of the original jurisdiction of this court. We do not find it necessary to make any decision on the point as applicable to the case before us."

The averments of the bill in this case show proprietary interests affected in the same manner and to as great an extent as those in the Wheeling Bridge case.

But in the light of the Debs case, *supra*, all questions of proprietary interest in the sovereign who sues to enjoin an obstruction to interstate commerce are of no moment.

In that case Mr. Lyman Trumbull, counsel for Debs, attacked the jurisdiction of the court on the ground that the United States had no proprietary interest to protect. He said (p. 575):

"The Government does not own the railroads. It is a bill by the Government to prevent interference with the private property of the citizen lest such interference restrain commerce among the States."

We have quoted above the answer made by the court to this argument.

2d. If the State of Louisiana were an absolutely independent foreign sovereign, she would have the right to sue in the courts of the United States to restrain the unlawful acts of persons which if not prevented would damage the trade and property of its citizens.

This point is fully covered by the case of The Emperor of Austria *vs.* Day & Kossuth (3d De Gex, Fisher & Jones, p. 217).

The bill in that case was filed to restrain Kossuth, the Hungarian patriot, and Day, a printer employed by him, from printing or issuing certain paper money which purported to be issued by the Hungarian nation, and was declared on its face receivable in payment of all debts, dues, and taxes, public and private.

It did not purport to be a counterfeit of the lawful money of the Austrian Empire, but rather a substitute therefor, and exchangeable for the silver coin thereof.

The damage averred in that case was that this money, which was worthless, would deceive the people of Austria and Hungary, would go into circulation there, and would injure them in their trade and property.

The injunction asked for was issued and made perpetual.

In the case of the Sapphire, 11 Wall., 167, the court declared that "a foreign sovereign as well as any other foreign person who has a demand of a civil nature against any person here may prosecute it in our courts," and the above case of the Emperor of Austria was quoted as authority for the proposition.

The question then resolves itself into this: Has the State of Louisiana surrendered so much of her sovereignty as would prevent her, at least in a court of the United States, from suing to protect the trade rights and property rights of the mass of her citizens against the unlawful acts of another State or the citizens of another State? We concede that she might not have such authority in the courts

of a foreign nation, as the rights of her citizens in such foreign country are merged and drowned in their larger rights as citizens of the United States. As to all foreign nations and States, she can undoubtedly exercise no sovereignty, because she has surrendered all those powers to the Federal Government, and can have no contact with or controversy with them except by and through the Federal Government.

But, as regards the other States of this Union and the citizens of those other States, her right to sue them in every civil case at law and in equity in the great tribunal of the Federal sovereign is specially reserved, and is made one of the articles of the solemn covenant entered into by all the States and all the people thereof. In Rhode Island *vs.* Massachusetts (*supra*) this court said (p. 719):

"Those States, in their highest sovereign capacity, in the convention of the people thereof; on whom by the Revolution, the prerogative of the Crown, and the transcendent power of Parliament devolved, in a plenitude unimpaired by any act, and controllable by no authority (6 Wheaton, 651; 8th Wheaton, 584–'8), adopted the Constitution by which they respectively made to the United States a grant of judicial power over controversies between two or more States. By the Constitution it was ordained that this judicial power, in cases where a State was a party, should be exercised by this court as one of original jurisdiction. The States waived their exemption from judicial power (6 Wheaton, 378–380) as sovereigns by original and inherent right, by their own grant of its exercise over themselves in such cases, but which they would not grant to any inferior tribunal. By this grant this court has acquired jurisdiction over the parties in this cause by their own consent and delegated authority, as their agent for executing the judicial power of the United States in the cases specified."

And again, on page 743:

"All the States have transferred the decision of their con-

troversies to this court; each had a right to demand of it the exercise of the power which they had made judicial by the confederation of 1781 and 1788, that we should do that which neither the States or Congress could do, settle the controversies between them."

And again, on page 744:

"In Cohens *vs.* Virginia, the court held that the judicial power of the United States must be capable of deciding any judicial question growing out of the constitution and laws; that in one class of cases the 'character of the parties is everything, the nature of the case nothing.' In the other 'the nature of the case is everything, the character of the parties nothing;' that the clause relating to cases in law or equity arising under the constitution, laws, and treaties, makes no exception in terms or regards 'the condition of the party.' If there be any exception, it is to be implied against the express words of the article. In the second class 'the jurisdiction depends entirely on the character of the parties,' comprehending 'controversies between two or more States.' 'If these be the parties it is entirely unimportant what may be the subject of controversy. BE IT WHAT IT MAY, THESE PARTIES HAVE A CONSTITUTIONAL RIGHT TO COME INTO THE COURTS OF THE UNION.'"

In every respect, except in so far as she has surrendered her sovereignty to the national sovereign, the State of Louisiana is a sovereign State.

This proposition has often been declared by this court.

Martin *vs.* Hunter's Lessee, 1 Wheaton, 325.
Buckner *vs.* Finley, 2 Peters, 590.
State of Rhode Island *vs.* Mass., 12 Peters, 719.
Ohio Life Ins. Co. *vs.* Debolt, 16 How., 428.
Doyle *vs.* Cont. Ins. Co., 94 U. S., 541.
Pennoyer *vs.* Neff, 95 U. S., 722.

Can it be possible that she has no power or right to appear in the courts of the nation to ask that the guarantees of the common bond of union be enforced, and that her citizens be protected by the Federal power in the exercise and enjoyment of Federal rights? We do not believe so and do not expect this court so to hold.

Respectfully submitted.

MILTON J. CUNNINGHAM,
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No. 6 Orig.

Supp. Brf. of Cunningham, Farrar

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Supreme Court of the United States.

OCTOBER TERM, 1899.

Filed Oct 25. 1899.

Original, No. 6.

THE STATE OF LOUISIANA, COMPLAINANT,

vs.

THE STATE OF TEXAS ET AL.

Supplemental Brief for Complainant on Plea to Jurisdiction.

MILTON J. CUNNINGHAM,
Attorney General of Louisiana.
EDGAR H. FARRAR,
BENJAMIN F. JONAS,
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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 10-25-'99

IN THE

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STATE OF LOUISIANA

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Supplemental Brief for Complainant on Plea to Jurisdiction.

I.

The argument of the attorney general of Texas seems to maintain that this court has no jurisdiction of any controversy between two States except one of boundary.

The history of the genesis of the Constitution destroys this argument.

In the original draft of the Constitution, reported to the convention on August 6, 1787, by the "Committee of Detail," jurisdiction of boundary and territorial disputes between two or more States was given to a special tribunal to be organized by the Senate (art. IX, sec. 2) after the analogy

of the orginal articles of confederation; and jurisdiction was given to the Supreme Court over "controversies between two or more States (except such as shall regard territory or jurisdiction)."

See Madison Papers in Supplement to Elliot's Debates, vol. 5 (ed. of 1876), p. 376.

The framers of the Constitution therefore considered that there were other controversies between States besides those of boundary and jurisdiction.

When this report was considered in detail by the body of the convention, this jurisdiction of the Senate was stricken out, on motion of Mr. Rutledge, on the ground that it "was rendered unnecessary by the national judiciary now to be established."

Ibidem, p. 471.

This motion and the reason given therefor necessarily required the limitative clause in the section defining the jurisdiction of the Supreme Court to be stricken out.

Accordingly, the report of the Committee on Style, presented September 12, 1787, five days before the Constitution was signed, fixed the jurisdiction of the Federal judiciary in the language in which it now stands in the Constitution.

Ibidem, p. 535.

Jurisdiction over the question of territory and boundaries therefor was superadded to the other grounds of jurisdiction of the Supreme Court in "controversies between two or more States."

No objection seems to have been raised at any time in the constitutional convention of 1787 to the grant of jurisdiction to the Supreme Court to controversies between States.

It did not present any novel feature in the new Government, because the special tribunals to be established by

Congress under the articles of confederation had since the foundation of the union between the States been vested with jurisdiction of "any * * * cause whatever" between them.

In none of the attacks made on the Constitution while it was pending before the people of the States for ratification was there a word directed against this clause.

Even Mr. Mason, who was a violent opponent of the Constitution in the Virginia convention, admitted that "the jurisdiction between States was right."

3d Elliot's Debates (old edition), p. 477.

In defending the Constitution in that convention, Mr. Madison said:

"The next case, where two or more States are the parties, *is not objected to.* Provision is made for this by the existing articles of confederation, and there can be no impropriety in referring such disputes to this tribunal."

Ibidem, p. 485.

Edmund Randolph (who refused to sign the constitution) in his letter to the Virginia house of delegates said:

"It follows too that the General Government ought to be the supreme *arbiter for adjusting every contention among the States.* In all their connections, therefore, with each other, *and particularly in commerce, which will create the greatest discord*, it ought to hold the reins."

Elliot's Debates (old edition), vol. 1, p. 523.

II.

The assistant attorney general admitted that any individual citizen of Louisiana might in the Federal court enjoin the Blunt embargo in his own behalf if he were thereby obstructed in his trade with Texas.

He further admitted that, under the doctrine of the Debs

case and United States *vs.* Texas, 143 U. S., the United States might file a bill in this court to enjoin the Blunt embargo.

But he denies the authority of the State of Louisiana, in a case where thousands of its citizens would have to sue to get relief, to come into the supreme tribunal of the nation and ask for an injunction.

Under this doctrine the State could never sue to abate a nuisance in any tribunal.

He says the "State is not quarantined in her corporate capacity."

Can a State in her corporate capacity smell a bad smell, or fall into pits dug in a highway, or bump its head on a low bridge over a highway, or be obstructed in floating down the channel of a navigable river?

He says further the whole State is not quarantined, but only the city of New Orleans, and that the only persons affected are those persons in the city of New Orleans engaged in interstate commerce.

At this point of the argument Mr. Justice Harlan put the significant question, "What would you say if your quarantine was directed against the whole State?"

No satisfactory answer was given to this question. The obvious point in the mind of the questioner was the elementary rule of logic that the whole includes all the parts. Seeing the conclusion to which he would be brought, counsel went off into the old fallacy of the "sorites," a favorite amusement of the Greek sophists, by which if one admits that one grain of wheat does not mean a pile of wheat, then by successive additions of a grain all the wheat in the world could be piled up together without its constituting a pile, because the difference between a pile and no pile would be a grain of wheat.

He asked the question if the State could sue if only one person was injured, and having concluded that it could not, he then proceeded to add successive individuals to this incapacitating one, and asked the court where it was going to

draw the line, and how many persons less than all the persons in the State it would require to give the State an interest.

There is no case of public injury or nuisance where every person in the community is affected.

It is sufficient that the burden fall on those in the community, considerable in number, the line of whose lives or of whose business or personal rights or property interests brings them into contact with the thing complained of.

He then argued that while a State might bring a suit to vindicate the rights of the public in its own courts, it could not bring such an action in the courts of the United States for the reason that the wrongs complained of affected Federal rights, and that it had no power or authority to appeal in behalf of its citizens to the Federal power to protect those Federal rights.

He attempted to dispose of the authority of the case of The Emperor of Austria *vs.* Day & Kossuth by saying that the Emperor of Austria had an interest in all the money in his realm. Even if such a statement were true it would not dispose of the distinct statements made by the great judges who decided that case, that the sovereign had the right to stand in judgment to protect the trade and property interests of his citizens threatened with injury and damage by the acts of the defendants, and that such an action is not political in its nature.

We submit that at no time was any answer made to our argument that the State as *parens patriæ*, as an integral part and member of this Union, which was a tripartite covenant between the people, the States, and the Federal sovereign, created by the people and the States, could come into the tribunal of the Federal sovereign, established as a common arbiter between States, and ask that common arbiter to enforce the fundamental conditions of the covenant and to use the Federal power to restrain another State or its

officers, acting under the color of its laws, from violating those fundamental conditions.

He made no answer to our claim that the conduct of the State of Texas fell exactly within the description of the controversies arising out of "fraudulent laws," declared by Hamilton, in the Federalist, to be within the jurisdiction committed to the Supreme Court over "controversies between two or more States."

Nor, as pertinent to this point, was any answer made to the question propounded by Mr. Justice White, which put the exact case involved in our bill:

"Whether if the State of Texas should pass a law saying that if one case of fever should occur in any foreign port, trade and commerce should thereafter go on between that port and Texas ports under reasonable rules of detention, inspection and fumigation, but that if one case of fever should occur in a Louisiana town or port all trade and commerce between such place and the State of Texas should be absolutely prohibited, the State of Louisiana could appeal to the Federal power to strike down this discrimination against the commerce of her citizens?"

The question before your honors in this case is one of the most profound moment to the commerce and the peace of the nation.

The quarantine power, as a branch of the police power, is one of the reserved powers of the States. The Federal Government has no quarantine power; it can only prevent the States in the exercise of their undoubted and unquestioned power of self-preservation from stepping beyond the sphere of honest health laws into the natural domain of the regulations of commerce.

The line of demarcation between that power which is honestly exercised and which necessarily "affects commerce" and that power which is dishonestly exercised and which regulates commerce may be difficult to draw in some cases, but no such difficulty can arise in the case at bar.

The whole subject of National Quarantine for which some persons are clamoring will be settled by the declaration of this court that no State and no part of a State exercising governmental authority has the power to make commercial war on the commerce of the citizens of another State, either by prohibitive or by grossly discriminative quarantine regulations, and that the State whose citizens are thus oppressed may appeal directly to this court for relief from such flagrant violations of the common bond of union between the people and the States.

Respectfully submitted.

MILTON J. CUNNINGHAM,
Attorney General of Louisiana.
EDGAR H. FARRAR,
BENJAMIN F. JONAS,
ERNEST B. KRUTTSCHNITT,
E. HOWARD MCCALEB, *Counsel.*

No. 6 Orig.

Supreme Court of the United States.

OCTOBER TERM, 1899.

Original No. —.

STATE OF LOUISIANA

vs.

THE STATE OF TEXAS ET ALS.

T. S. Smith,
Attorney General of the State of Texas.
R. H. Ward,
Assistant Attorney General of Texas.

Judd & Detweiler, Printers, Washington, D. C. 10-17-99

IN THE

Supreme Court of the United States

OCTOBER TERM, 1899.

Original No. —.

STATE OF LOUISIANA

vs.

THE STATE OF TEXAS ET ALS.

Now comes the State of Texas, by her attorney general, T. S. Smith, for the sole and only purpose of presenting to this honorable court her objections to and protest against the granting by this court to complainant herein leave to file the bill of complaint exhibited to the court, and for no other purpose, the grounds of said objection and protest being, *first*, that this court has no jurisdiction, of either the parties to or of the subject-matter of this suit, because it appears from the face of said bill that the matters complained of do not constitute, within the meaning of the Constitution of the United States, any controversy between the States of Louisiana and Texas.

Second. Because the allegations of said bill show that the only issues presented by said bill arise between the State of

Texas or her officers and certain persons in the city of New Orleans, in the State of Louisiana, and who are engaged in interstate commerce, which do not in any manner concern the State of Louisiana as a corporate body or State.

Third. Because said bill shows upon its face that this suit is in reality for and on behalf of certain individuals engaged in interstate commerce, and while the suit is attempted to be prosecuted for and in the name of the State of Louisiana, said State is only in effect loaning its name to said individuals and is only a nominal party, the real parties at interest being said individuals in the said city of New Orleans who are engaged in interstate commerce.

Fourth. That if the allegations of said bill be true, then it appears that as to the matters complained of the said William F. Blunt, health officer of the State of Texas, is not acting for and on behalf of the State of Texas under and by virtue of any law of the State, but that all of his acts are in excess of his power and authority as an officer of Texas, not binding on the State of Texas, and that as to such illegal and unauthorized acts of said William F. Blunt the said State of Texas cannot be held responsible, and therefore no such possible controversy between the States of Louisiana and Texas is shown as would give this court jurisdiction of this suit.

Fifth. That this court being without jurisdiction of the parties or of the subject-matter of this suit, to permit the complainant to file this bill and to force the State of Texas and her officers to appear herein would only subject the

State of Texas to great expense and annoyance without any benefit or advantage to complainant.

Wherefore the State of Texas most respectfully prays that this honorable court will refuse to grant leave to complainant to file said bill of complainant or to prosecute said suit against her.

T. S. SMITH,
Attorney General of the State of Texas.
R. H. WARD,
Assistant Attorney General of Texas.

In support of the above objections, we respectfully refer to the case of New Hampshire *vs.* Louisiana and others and New York *vs.* Louisiana and others, 108 U. S., 89, 90, 91.

T. S. SMITH,
Attorney General of Texas, and
R. H. WARD,
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T. S. SMITH,
Attorney General of Texas, and
R. H. WARD,
Assistant Attorney General of Texas.

CASES ADJUDGED

IN THE

SUPREME COURT OF THE UNITED STATES,

AT

OCTOBER TERM, 1899.

LOUISIANA *v.* TEXAS.

ORIGINAL.

No. 6. Submitted October 24, 1899. — Decided January 15, 1900.

The bill of complaint on the part of Louisiana against Texas, alleged that the State of Texas had granted to its Governor and its Health Officer extensive powers over the establishment and maintenance of quarantines over infectious or contagious diseases; that this power had been exercised in a way and with a purpose to build up and benefit the commerce of cities in Texas which were rivals of New Orleans; and it prayed for a decree that "neither the State of Texas, nor her Governor, nor her Health Officer, have the right, under the cover of an exercise of police or quarantine powers, to declare and enforce against interstate commerce, between the State of Louisiana, or any part thereof, and the State of Texas, an absolute embargo, prohibiting the movement and conduct of said commerce, or to make, declare and enforce against places infected with yellow fever or other infectious diseases in the State of Louisiana discriminative quarantine rules or regulations, affecting interstate commerce between the State of Louisiana, or any part thereof, and the State of Texas, different from and more burdensome than the quarantine rules and regulations affecting interstate or foreign commerce between the State of Texas and other States and countries infected with yellow fever and other infectious diseases;" and the bill asked for an injunction, restraining the Texas officials from enforcing the Texas laws in the manner in which they were enforced. *Held:*

Statement of the Case.

(1) That in order to maintain jurisdiction of the bill it must appear that the controversy to be determined was a controversy arising directly between the State of Louisiana and the State of Texas, and not a controversy in vindication of the grievances of particular individuals;

(2) That the gravamen of this bill was not a special and peculiar injury, such as would sustain an action by a private person, but that the State of Louisiana presented herself in the attitude of *parens patriæ*, trustee, guardian or representative of all her citizens;

(3) That the bill does not set up facts which show that the State of Texas has so authorized or confirmed the alleged action of her health officer as to make it her own, or from which it necessarily follows that the two States are in controversy within the meaning of the Constitution;

(4) That the court was unable to hold that the bill could be maintained as presenting a case of controversy between a State and citizens of another State;

(5) That the bill could not be maintained as against the health officer alone, on the theory that his conduct was in violation of or in excess of a valid law of the State.

Mr. Justice White concurred in the result. Mr. Justice Harlan concurred in the result, but dissented from some of the propositions contained in the opinion of the court: as did also Mr. Justice Brown.

The State of Louisiana by her Governor applied to this court for leave to file a bill of complaint against the State of Texas, her Governor and her health officer. Argument was had on objections to granting leave, but it appearing to the court the better course in this instance, leave was granted, and the bill filed, whereupon defendants demurred, and the cause was submitted on the oral argument already had and printed briefs.

The bill alleged: "That the city of New Orleans, one of the great commercial cities of this republic, and the second export city of this continent, containing about two hundred and seventy-five thousand inhabitants, many of whom are largely engaged in interstate commerce with the inhabitants of the State of Texas, is situated within the territory of your orator; that said city contains nearly one fourth of all the inhabitants of your orator, and the assessed values of her property are more than one half the assessed values of the whole State, and she contributes by taxes and licenses more than five eighths of your orator's revenue.

"That two lines of railroad, the Southern Pacific and the Texas and Pacific, run directly from the city of New Orleans through the States of Louisiana and Texas, and into the States and Territories of the United States and of Mexico, beyond the State of Texas, with the inhabitants of which States and Territories the citizens of New Orleans are also engaged in interstate and foreign commerce, such commerce largely following the lines of said railroads and their many connections.

"That the State of Texas, by her Revised Civil Statutes, adopted at the regular session of the Twenty-fourth Legislature, held in the year 1895, being Title XCII thereof, has granted to her Governor and her health officer extensive powers over the establishment and maintenance of quarantines against infectious or contagious diseases, with authority to make rules and regulations for the detention of vessels, persons and property coming into the State from places infected, or deemed to be infected, with such diseases.

"That Joseph D. Sayers, a citizen of the State of Texas, is now, and has been for some time past, Governor of said State.

"That William F. Blunt, a citizen of the State of Texas, is now, and has been for some time past, the state health officer of the State of Texas.

"That the ports of said State, situated on the Gulf coast, are engaged in commerce with the ports of Mexico, Central and South America and Cuba, known to be permanently infected with yellow fever; said commerce being largely competitive with similar commerce coming to the port of New Orleans.

"That on the 1st day of March, 1899, Joseph D. Sayers, Governor of the State of Texas, under the provisions of the said laws, issued his proclamation establishing quarantine on the Gulf coast and Rio Grande border against all places, persons or things coming from places infected by yellow fever, etc., a copy of which proclamation is hereto annexed and made part of this bill and marked Exhibit 'A.'

"That the rules and regulations established in said quarantine proclamation permit trade and commerce between such infected ports and the State of Texas, and provide for the

fumigation and reasonable detention of ships and cargoes from infected ports.

"That on or about the 31st day of August, 1899, a case of yellow fever was officially declared to exist in the city of New Orleans, in a part of the city several miles away from the commercial part thereof, and from that time to this several other sporadic cases have been reported in similar parts of the city.

"That as soon as said first case was reported the said William F. Blunt, Health Officer of the State of Texas, claiming to act under the provisions of Article 4324 of the Revised Civil Statutes, under the pretence of establishing a quarantine, placed an embargo on all interstate commerce between the city of New Orleans and the State of Texas, absolutely prohibiting all common carriers entering the State of Texas from bringing into the State any freight or passengers or even the mails of the United States, coming from the city of New Orleans, and to enforce these orders he immediately placed, and now maintains, armed guards, acting under the authority of the State of Texas, on all the lines of travel from the State of Louisiana into the State of Texas, with instructions to enforce the embargo declared by him *vi et armis*, which instructions these armed guards are carrying out to the letter; that about six days later he modified his order so as to permit the Government of the United States to carry and deliver the mails; and also modified his order so as to permit persons and their baggage to enter the State of Texas, after ten days' detention at the quarantine detention camps, established by him, and after fumigation of their baggage; but that he now maintains, and announces his intention to maintain indefinitely, his absolute prohibition of all interstate commerce between the city of New Orleans and the State of Texas; that he has refused to permit the introduction of sulphuric acid in iron drums, unpacked hardware, machinery and other articles coming from localities in the city of New Orleans, far removed from the places where the sporadic cases of fever have occurred, and which by their nature are concededly incapable of conveying infection; that he had estab-

lished no system of classification or inspection of the articles of interstate commerce, coming from the city of New Orleans, to determine whether they are, or may be, infected, or whether they are capable, or not, of conveying infection, no period of detention for such articles, no place or method of disinfection thereof; his only method being absolute and unconditional prohibition of such interstate commerce; that it is a notorious fact, and well known to said Blunt, that all of the interstate commerce between New Orleans and Texas is carried on by railroads, and none by water communication between the port of New Orleans and the Texas ports, and that the effect of his orders is to destroy all such commerce, to take away the trade of the merchants and business men of the city of New Orleans, and to transfer that trade to rival business cities in the State of Texas.

"That while Joseph D. Sayers, Governor of the State of Texas, has issued no formal proclamation of quarantine, as provided by law, to wit, Art. 4324 of the Revised Civil Statutes, defining the rules and regulations of such quarantine so declared by said Blunt, your orator charges that the rules and regulations established by said Blunt have the full force of law until modified or changed by the proclamation of the Governor, and that the Governor knows all these facts and approves and adopts the same, and permits these rules and regulations to stand and to be executed in full force and effect as established by said Blunt.

"Now your orator recognizes the right and power of the State of Texas and the public officials thereof to take prudent and reasonable measures to protect the people of said State from infection, to establish quarantine and reasonable inspection laws, but your orator denies that said State, or its officials, acting under its laws, under the cover of exercising its police powers, can prohibit or so burden interstate commerce as to make such commerce impossible.

"Your orator avers that it is a recognized and acknowledged fact by all the sanitarians and health officials of the various States exposed to infection by yellow fever and by the health officials of the United States, and by all scientific

students of infection and sanitation, that commerce can be conducted between infected and non-infected points, with small inconvenience and without any danger of infection, by classifying the articles of commerce and by pursuing certain well-recognized rules and precautions with reference to the articles and vehicles of commerce.

"That after the yellow fever outbreak of 1897 a quarantine convention was held in Mobile, Ala., and, on the advice of that convention, a conference of the health officials of Virginia, South Carolina, Georgia, Florida, Alabama, Mississippi, Missouri and the United States Marine Hospital Service met at Atlanta, Ga., and formulated such regulations which were adopted by the Boards of Health of all said States, and, as subsequently revised, are now in full force and effect between the said States; that additional experience having been gained by the reappearance of yellow fever in the fall of 1898, a revising conference was held in the city of New Orleans on February 9, 1899, at which conference the Atlanta regulations were in some respects modified. A copy of the said regulations, original and as modified, are hereto annexed and made part of this bill and marked Exhibit 'B.'

"Your orator avers that said William F. Blunt, or his predecessor in office, was health officer of the State of Texas at the time these conferences were held, that he and his predecessor in office refused or neglected to attend them in person or by representative, and he has continually refused to adopt the Atlanta regulations, or any of them, or any regulations similar to them, and insists, as his predecessor in office insisted, upon being a law to himself, and upon using no means of dealing with yellow fever infection in the city of New Orleans, or elsewhere in the State of Louisiana, real or imaginary, except an absolute embargo upon interstate commerce to be established at his pleasure and to last as long as he chooses to maintain it.

"That in pursuance of this policy, in the year 1897, his predecessor in office established a similar embargo on interstate commerce between New Orleans and other points in Louisiana, supposed by him to be infected, and the State of

Texas, on the 10th day of September; and refused to remove or to modify said embargo until the —— day of December, 1897, during which period he even refused to permit railroad cars that had been in the city of New Orleans to enter or even pass through the State of Texas, on their way to the countries, States and Territories beyond.

"That in pursuance of the same policy, in the year 1898, the said William F. Blunt, health officer, and the Governor of the State of Texas, established a similar embargo on all interstate commerce between the State of Louisiana and the State of Texas, on the 18th day of September, and refused to remove or modify the same until the 1st day of November.

"That in pursuance of the same policy, the said William F. Blunt, because a single case of yellow fever was declared in the city of New Orleans, did on May 30, 1899, establish a similar embargo on interstate commerce between the city of New Orleans and the State of Texas, which he refused to modify or to remove until June 9, 1899, and then only under great pressure, although he was advised on June 2, 1899, by the representatives of the health authorities of the States of Alabama and Mississippi, of the United States Marine Hospital Service, and of the Louisiana state board of health, who had been for some days in the city of New Orleans, making a personal inspection of her sanitary and health conditions, that they deemed it 'unnecessary and unwise for any State or city to quarantine against New Orleans under present conditions.'

"Your orator avers that the State of Texas, her Governor and her health officer, as shown by the rules and regulations established by them in the proclamation aforesaid for the quarantine on the Gulf coast, admit the truthfulness of the claim of your orator that commerce can be carried on with infected places and ports, under reasonable rules and regulations as to inspection, fumigation and detention, and admit that there are articles of commerce incapable of conveying infection, and actually permit such commerce in all articles to be so carried on to the advantage and benefit of the commerce of the ports of Texas and her merchants engaged in commerce in said ports.

"Your orator avers that the effect of the embargoes imposed by the State of Texas upon the commerce of the city of New Orleans with Texas is to build up and benefit the commerce of the city of Galveston, in Texas, and the commerce of other cities in Texas, all of which are commercial rivals of the city of New Orleans for the large commerce of the State of Texas and the adjoining States and Territories.

"That prior to the embargoes aforesaid of the years 1897 and 1898 the city of New Orleans was the greatest cotton exporting port of the United States, and a very large portion of the cotton grown in Texas was exported through the port of New Orleans; for instance, for the season of 1894–5 more than 31 per cent thereof; for the season 1895–6 more than 30 per cent thereof; for the season 1896–7, 25 per cent thereof.

"That as consequence of the two trade embargoes aforesaid the percentage of the Texas cotton crop exported through the port of New Orleans for the season of 1897–8 was only 19 per cent; and for the season of 1898–9 was only 15 per cent; and for the season of 1898–9, ending September 1, 1899, the city of Galveston handled more export cotton than the city of New Orleans.

"That the effect of said embargoes is all the more disastrous to the commerce of your orator, and of her cities and towns, because declared and made operative during the months of September, October, November and the early part of December, the period of the greatest activity and the largest movement of commerce among the States of the South, and between the State of Louisiana, the city of New Orleans and the State of Texas.

"Now your orator avers that in view of the unreasonable, harsh, prohibitive and discriminating character of the pretended quarantines, declared and maintained by the State of Texas and her health officer, against the city of New Orleans and other localities in the State of Louisiana, is nothing less than a commercial war declared against your orator, her ports, cities and citizens; not for the *bona fide* purpose of protecting the health of the State of Texas, but for the purpose of in-

creasing the trade and commerce of the State of Texas and of her ports, cities and citizens, to the great damage and injury of your orator and her citizens; that such embargoes on interstate commerce injure and impoverish your orator's citizens, reduce the value of her taxable property, diminish her revenues, retard immigration, reduce the value of her public lands, and deprive her citizens of their rights and privileges as citizens of the United States.

"Your orator avers that the embargo upon interstate commerce between the city of New Orleans, in the State of Louisiana, and the State of Texas, established by said Blunt on or about the first day of September, 1899, and now maintained by him and the other officials of the State of Texas, will be continued by them for an indefinite period, to the great damage and injury of your orator's ports, commerce and revenues, and to the commerce of her citizens and to the rights of her citizens under the Constitution of the United States, unless they be enjoined and restrained by order of this court.

"Your orator avers that, from the past conduct of the State of Texas, and of her Governors and health officers, your orator is justified in averring and charging, and does aver and charge, that it is the fixed purpose and intention of the said State, and of her Governors and health officers, whenever in the future any case of yellow fever, or other infectious disease, occurs in any parish, city or town within your orator's borders, to immediately declare, set up and maintain an absolute prohibition of interstate commerce between said supposed infected parish, city or town, and the State of Texas, and to keep the same in force during the pleasure of such officials, or to make and establish discriminative rules and regulations covering quarantines on such interstate commerce, different from and more burdensome than the rules and regulations concerning quarantines on interstate commerce with other States and foreign commerce with countries also infected with yellow fever, or other infectious diseases, and thereby to injure and oppress your orator and her citizens.

"Now your orator avers that the absolute prohibition

against the movement and operation of interstate commerce between the city of New Orleans and the inhabitants thereof, and the State of Texas and the inhabitants thereof, established by said William F. Blunt, health officer of the State of Texas and now maintained and enforced by him, the Governor and the other officials of the State of Texas, is in direct contravention of the provisions of the Constitution of the United States, and particularly of that clause thereof which grants to the Congress power to regulate commerce with foreign nations, among the several States, and with the Indian tribes, and is null, void and of no effect, and the continuance thereof ought to be restrained by the order of this honorable court.

"Your orator further avers that the various cities, counties and towns in the State of Texas have authority, under the statutes aforesaid, to establish quarantines, but all such quarantines are by statute subordinate to, subject to and regulated by the rules and regulations prescribed by the Governor and the state health officer, and that, therefore, all such quarantines are dirigible and controllable by the Governor and the health officer of Texas.

"Your orator is informed and believes and so charges that it is the intention of certain counties, cities and towns along the lines of the railroads aforesaid, in case your honors should restrain the operation of the embargo established as aforesaid by William F. Blunt, state health officer, to severally establish the same embargo on their own account, and to prevent the passage of trains on said railroads carrying interstate commerce from the city of New Orleans through them to other parts of the State of Texas and to other States, and to so hinder, obstruct and delay the transportation of said commerce along the lines of railroad running through their limits as to render its conduct impossible; that in case it should be considered that the public authorities of such counties, towns and cities are not personally bound by any order your honors may issue in this cause, and in case they should attempt to carry out any such illegal plan, your orator reserves the right hereafter to make such officials parties to this bill, so as to subject them to the control of the court."

Statement of the Case.

The bill then prayed for answers under oath; that the court decree "that neither the State of Texas, nor her Governor, nor her health officer, have the right, under the cover of an exercise of police or quarantine powers, to declare and enforce against interstate commerce, between the State of Louisiana, or any part thereof, and the State of Texas, an absolute embargo, prohibiting the movement and conduct of said commerce, or to make, declare and enforce against places infected with yellow fever, or other infectious diseases, in the State of Louisiana, discriminative quarantine rules and regulations affecting interstate commerce between the State of Louisiana, or any part thereof, and the State of Texas, different from and more burdensome than the quarantine rules and regulations affecting interstate or foreign commerce between the State of Texas and other States and countries infected with yellow fever, or other infectious diseases, and that the embargo and prohibition upon interstate commerce between the city of New Orleans and the State of Texas, declared by William F. Blunt, health officer of the State of Texas, on or about the 1st day of September, 1899, and now maintained and enforced by the State of Texas, under the guise of a quarantine against yellow fever, is contrary to the Constitution of the United States, null, void and of no effect and validity;" that a preliminary injunction be issued "prohibiting, enjoining and restraining the State of Texas, and all of her officers and public officials, and prohibiting, enjoining and restraining Joseph D. Sayers, Governor of the State of Texas, and William F. Blunt, health officer of the State of Texas, their successors in office, and all of their subordinates, assistants, agents and employés, from establishing, maintaining and enforcing, or attempting to establish, maintain and enforce, under the guise of a quarantine against yellow fever, any embargo or absolute prohibition upon interstate commerce between the State of Louisiana, or any part thereof, and the State of Texas, or from establishing, maintaining and enforcing, or attempting to establish, maintain and enforce against interstate commerce between the State of Louisiana, or any part thereof, and the State of Texas, discriminative and burdensome quar-

antine regulations other and different from the regulations established by such authorities against foreign and interstate commerce between the State of Texas and other countries and States infected with yellow fever, or other infectious diseases, and particularly enjoining, prohibiting and restraining them, and each of them, from maintaining or enforcing, directly or indirectly, the prohibitory embargo on interstate commerce established against the city of New Orleans on or about the first day of September, 1899, under the guise and pretence of a quarantine regulation;" and that such injunction be made perpetual on final hearing; for costs; and for general relief.

The demurrer assigned the following causes:

"First. That this court has no jurisdiction of either the parties to or of the subject-matter of this suit, because it appears from the face of said bill that the matters complained of do not constitute, within the meaning of the Constitution of the United States, any controversy between the States of Louisiana and Texas.

"Second. Because the allegations of said bill show that the only issues presented by said bill arise between the State of Texas or her officers and certain persons in the city of New Orleans, in the State of Louisiana, who are engaged in interstate commerce, and which do not in any manner concern the State of Louisiana as a corporate body or State.

"Third. Because said bill shows upon its face that this suit is in reality for and on behalf of certain individuals engaged in interstate commerce, and while the suit is attempted to be prosecuted for and in the name of the State of Louisiana, said State is in effect loaning its name to said individuals and is only a nominal party, the real parties at interest being said individuals in the said city of New Orleans who are engaged in interstate commerce.

"Fourth. Because it appears from the face of said bill that the State of Louisiana, in her right of sovereignty, is seeking to maintain this suit for the redress of the supposed wrongs of her citizens in regard to interstate commerce, while under the Constitution and laws the said State possesses no such sovereignty as empowers her to bring an original suit in this court for such purpose.

"Fifth. Because it appears from the face of said bill that no property right of the State of Louisiana is in any manner affected by the quarantine complained of, nor is any such property right involved in this suit as would give this court original jurisdiction of this cause."

Mr. Milton J. Cunningham, *Mr. Edgar H. Farrar*, *Mr. Benjamin F. Jonas*, *Mr. Ernest B. Kruttschnitt*, and *Mr. E. Howard McCaleb* for the State of Louisiana.

Mr. Thomas S. Smith and *Mr. Robert H. Ward* for the State of Texas and others.

Mr. Chief Justice Fuller, after stating the case, delivered the opinion of the court.

The ninth of the Articles of Confederation of 1778 provided that the Congress should be "the last resort on appeal in all disputes and differences now subsisting or that may hereafter arise between two or more States concerning boundary, jurisdiction or any other cause whatever," the authority to be exercised through a tribunal to be created by the Congress as prescribed, and whose judgment should be final and conclusive; and also that "all controversies concerning the private right of soil claimed under different grants of two or more States" should be determined in the same manner.

In the Constitutional Convention, the Committee of Detail, composed of Rutledge, Randolph, Gorham, Ellsworth and Wilson, to which the resolutions arrived at by the Convention and sundry propositions had been referred, reported on the sixth of August, A.D. 1787, a draft of a Constitution, consisting of twenty-three articles.

The second section of the ninth article provided that as to "all disputes and controversies now subsisting, or that may hereafter subsist, between two or more States, respecting jurisdiction or territory," the Senate should have power to designate a special tribunal to finally determine the same by its judgment; and by the third section, "all controversies concerning lands claimed under different grants of two or more States" were to be similarly determined.

The third section of the proposed eleventh article provided, among other things, that the jurisdiction of the Supreme Court should extend "to controversies between two or more States, except such as shall regard territory or jurisdiction; between a State and citizens of another State; between citizens of different States; and between a State, or the citizens thereof, and foreign States, citizens or subjects."

On the twenty-fifth of August Mr. Rutledge said in respect to sections two and three of article nine: "This provision for deciding controversies between the States was necessary under the Confederation, but will be rendered unnecessary by the National Judiciary now to be established;" and on his motion the sections were stricken out.

The words "between citizens of the same State claiming lands under grants of different States" were subsequently inserted in the third section of the eleventh article, and the words "except such as shall regard territory or jurisdiction" omitted. 1 Elliot, 223, 224, 261, 262, 267, 270; 5 Elliot, 471; Meigs on Growth of the Constitution, 244, 249.

Clauses 1 and 2 of the second section of Article III of the Constitution as finally adopted read:

"The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States, between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects.

"In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make."

The reference we have made to the derivation of the words "controversies between two or more States" manifestly indicates that the framers of the Constitution intended that they should include something more than controversies over "territory or jurisdiction"; for in the original draft as reported the latter controversies were to be disposed of by the Senate, and controversies other than those by the judiciary, to which by amendment all were finally committed. But it is apparent that the jurisdiction is of so delicate and grave a character that it was not contemplated that it would be exercised save when the necessity was absolute and the matter in itself properly justiciable.

Undoubtedly, as remarked by Mr. Justice Bradley in *Hans* v. *Louisiana*, 134 U. S. 1, 15, the Constitution made some things "justiciable which were not known as such at the common law; such, for example, as controversies between States as to boundary lines, and other questions admitting of judicial solution. . . . The establishment of this new branch of jurisdiction seemed to be necessary from the extinguishment of diplomatic relations between the States. Of other controversies between a State and another State or its citizens, which on the settled principles of public law are not subjects of judicial cognizance, this court has often declined to take jurisdiction. See *Wisconsin* v. *Pelican Ins. Co.*, 127 U. S. 265, 288, 289, and cases there cited."

By the Judiciary Act of 1789 the judicial system was organized and the powers of the different courts defined. Its thirteenth section, carried forward as § 687 of the Revised Statutes, provided "that the Supreme Court shall have exclusive jurisdiction of all controversies of a civil nature, where a State is a party, except between a State and its citizens; and except also between a State and citizens of other States, or aliens, in which latter case it shall have original but not exclusive jurisdiction."

The language of the second clause of the second section of Article III, "in all cases in which a State shall be party," means in all the enumerated cases in which a State shall be a party, and this is stated expressly when the clause speaks

of the other cases where appellate jurisdiction is to be exercised. This second clause distributes the jurisdiction conferred in the previous one into original and appellate jurisdiction, but does not profess to confer any. The original jurisdiction depends solely on the character of the parties, and is confined to the cases in which are those enumerated parties and those only. *California* v. *Southern Pacific Railroad Company*, 157 U. S. 229, 259; *United States* v. *Texas*, 143 U. S. 621. And by the Constitution and according to the statute, the original jurisdiction of this court is exclusive over suits between States, though not exclusive over those between a State and citizens of another State.

On the 8th of January, 1798, the Eleventh Amendment was ratified, as follows: "The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State."

Referring to this Amendment, Mr. Chief Justice Waite, in *New Hampshire* v. *Louisiana* and *New York* v. *Louisiana*, 108 U. S. 76, 91, said: "The evident purpose of the Amendment, so promptly proposed and finally adopted, was to prohibit all suits against a State by or for citizens of other States, or aliens, without the consent of the State to be sued, and in our opinion, one State cannot create a controversy with another State within the meaning of that term as used in the judicial clauses of the Constitution by assuming the prosecution of debts owing by other States to its citizens."

In order then to maintain jurisdiction of this bill of complaint as against the State of Texas, it must appear that the controversy to be determined is a controversy arising directly between the State of Louisiana and the State of Texas, and not a controversy in the vindication of grievances of particular individuals.

By the Constitution, the States are forbidden to "enter into any treaty, alliance or confederation; grant letters of marque and reprisal;" or, without the consent of Congress, "keep troops, or ships of war in time of peace, enter into any agree-

ment or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay." Art. 1, sec. 10.

Controversies between them arising out of public relations and intercourse cannot be settled either by war or diplomacy, though, with the consent of Congress, they may be composed by agreement. As pointed out by Mr. Justice Field in *Virginia* v. *Tennessee*, 148 U. S. 503, 519, there are many matters on which the different States may agree that can in no respect concern the United States, while there are other compacts or agreements to which the prohibition of the Constitution applies. And as to this, he quotes from Mr. Justice Story as follows: "Story, in his Commentaries, (§ 1403,) referring to a previous part of the same section of the Constitution in which the clause in question appears, observed that its language 'may be more plausibly interpreted from the terms used, "treaty, alliance or confederation," and upon the ground that the sense of each is best known by its association (*noscitur a sociis*) to apply to treaties of a political character; such as treaties of alliance for purposes of peace and war; and treaties of confederation, in which the parties are leagued for mutual government, political coöperation, and the exercise of political sovereignty, and treaties of cession of sovereignty, or conferring internal political jurisdiction, or external political dependence, or general commercial privileges;' and that 'the latter clause, "compacts and agreements," might then very properly apply to such as regarded what might be deemed mere private rights of sovereignty; such as questions of boundary; interests in lands situate in the territory of each other, and other internal regulations for the mutual comfort and convenience of States bordering on each other.' And he adds: 'In such cases the consent of Congress may be properly required, in order to check any infringement of the rights of the National Government; and, at the same time, a total prohibition to enter into any compact or agreement might be attended with permanent inconvenience or public mischief.'" But it was also there ruled that where the consent of Congress was requisite, it might be given subsequently or might be

implied from subsequent action of Congress itself toward the two States.

In the absence of agreement it may be that a controversy might arise between two States for the determination of which the original jurisdiction of this court could be invoked, but there must be a direct issue between them, and the subject-matter must be susceptible of judicial solution. And it is difficult to conceive of a direct issue between two States in respect of a matter where no effort at accommodation has been made; nor can it be conceded that it is within the judicial function to inquire into the motives of a state legislature in passing a law, or of the chief magistrate of a State in enforcing it in the exercise of his discretion and judgment. Public policy forbids the imputation to authorized official action of any other than legitimate motives.

As might be expected in view of the nature of the jurisdiction, the cases are few in which the aid of the court has been sought in "controversies between two or more States." They are cited in *Wisconsin* v. *Pelican Ins. Co.*, 127 U. S. 265, and are chiefly controversies as to boundaries.

In *South Carolina* v. *Georgia*, 93 U. S. 4, 14, a bill was filed for an injunction against the State of Georgia, the Secretary of War and others, from "obstructing or interrupting" the navigation of the Savannah River in violation of the compact entered into between the States of South Carolina and Georgia on the 24th day of April, 1787. The bill was dismissed because no unlawful obstruction of navigation was proved, but the question was expressly reserved whether "a State, when suing in this court for the prevention of a nuisance in a navigable river of the United States, must not aver and show that it will sustain some special and peculiar injury therefrom, and such as would enable a private person to maintain a similar action in another court."

So in *Wisconsin* v. *Duluth*, 96 U. S. 379, 382, the contention that the court could "take cognizance of no question which concerns alone the rights of a State in her political or sovereign character; that to sustain the suit she must have some proprietary interest which is affected by the defendant," was not passed upon.

In *Pennsylvania* v. *Wheeling & Belmont Bridge Co.*, 13 How. 519, the court treated the suit as brought to protect the property of the State of Pennsylvania.

But in *Debs, Petitioner*, 158 U. S. 564, involving a case in the Circuit Court in which the United States had sought relief by injunction, it was observed: "That while it is not the province of the Government to interfere in any mere matter of private controversy between individuals, or to use its great powers to enforce the rights of one against another, yet, whenever the wrongs complained of are such as affect the public at large, and are in respect of matters which by the Constitution are intrusted to the care of the Nation, and concerning which the Nation owes the duty to all the citizens of securing to them their common rights, then the mere fact that the Government has no pecuniary interest in the controversy is not sufficient to exclude it from the courts or prevent it from taking measures therein to fully discharge those constitutional duties."

It is in this aspect that the bill before us is framed. Its gravamen is not a special and peculiar injury such as would sustain an action by a private person, but the State of Louisiana presents herself in the attitude of *parens patriæ*, trustee, guardian or representative of all her citizens.

She does this from the point of view that the State of Texas is intentionally absolutely interdicting interstate commerce as respects the State of Louisiana by means of unnecessary and unreasonable quarantine regulations. Inasmuch as the vindication of the freedom of interstate commerce is not committed to the State of Louisiana, and that State is not engaged in such commerce, the cause of action must be regarded not as involving any infringement of the powers of the State of Louisiana, or any special injury to her property, but as asserting that the State is entitled to seek relief in this way because the matters complained of affect her citizens at large. Nevertheless if the case stated is not one presenting a controversy between these States, the exercise of original jurisdiction by this court as against the State of Texas cannot be maintained.

By Title xcii of the Revised Statutes of the State of Texas of 1895, "The Governor is empowered to issue his proclamation declaring quarantine on the coast, or elsewhere within this State, whenever in his judgment quarantine may become necessary, and such quarantine may continue for any length of time as in the judgment of the Governor the safety and security of the people may require." It is made the Governor's duty "to select and appoint, by and with the advice and consent of the Senate, from the most skilful physicians of the State of Texas, one physician who shall be known as health officer of the State, and shall from previous and active practice be familiar with yellow fever and pledged to the importance of both quarantine and sanitation." It was also provided that "whenever the Governor has reason to believe that the State of Texas is threatened at any point or place on the coast, border or elsewhere within the State with the introduction or dissemination of yellow fever contagion, or any other infectious and contagious disease that can and should, in the opinion of the state health officer, be guarded against by state quarantine, he shall, by proclamation, immediately declare said quarantine against any and all such places, and direct the state health officer to promptly establish and enforce the restrictions and conditions imposed and indicated by said quarantine proclamation, and when from any cause the Governor cannot act, and the exigencies of the threatened danger require immediate action, the state health officer is empowered to declare quarantine as prescribed in this article, and maintain the same until the Governor shall officially take such action as he may see proper." And further, that the laws in regard to state quarantine should remain and be in full force and operation on the coast or elsewhere in the State as the Governor or health officer might direct, and be enforced as heretofore, "with such additional changes in station and general management as the Governor may think proper." Differences and disputes in regard to local quarantine were to be determined by the Governor, and all county and municipal quarantine was made subordinate to such rules and regulations as might be prescribed by the Governor or state health officer. It

was made the duty of any county, town or city authority on the coast or elsewhere in the State, on the promulgation of the Governor's proclamation declaring quarantine, to provide suitable stations and employ competent physicians as health officers subject to the approval of the Governor, and in case of the failure of the authorities to do so, the Governor was empowered to act. Provision was made for the detention of persons, and vessels, and for the disinfection of vessels and their cargoes and passengers arriving at the ports of Texas from any infected port or district, and for rules and regulations in regard thereto, "the object of such rules and regulations being to provide safety for the public health of the State without unnecessary restriction upon commerce and travel."

It is not charged that this statute is invalid nor could it be if tested by its terms. While it is true that the power vested in Congress to regulate commerce among the States is a power complete in itself, acknowledging no limitations other than those prescribed in the Constitution, and that where the action of the States in the exercise of their reserved powers comes into collision with it, the latter must give way, yet it is also true that quarantine laws belong to that class of state legislation which is valid until displaced by Congress, and that such legislation has been expressly recognized by the laws of the United States almost from the beginning of the Government.

In *Morgan Steamship Company* v. *Louisiana Board of Health*, 118 U. S. 455, this was so held, and Mr. Justice Miller, delivering the opinion of the court, said: "The matter is one in which the rules that should govern it may in many respects be different in different localities and for that reason be better understood and more wisely established by the local authorities. The practice which should control a quarantine station on the Mississippi River, one hundred miles from the sea, may be widely and wisely different from that which is best for the harbor of New York." Hence, even if Congress had remained silent on the subject, it would not have followed that the exercise of the police power of the State in this regard, although necessarily operating on inter-

state commerce, would be therefore invalid. Although from the nature and subjects of the power of regulating commerce it must be ordinarily exercised by the National Government exclusively, this has not been held to be so where in relation to the particular subject-matter different rules might be suitable in different localities. At the same time, Congress could by affirmative action displace the local laws, substitute laws of its own, and thus correct any unjustifiable and oppressive exercise of power by state legislation.

The complaint here, however, is not that the laws of Texas in respect of quarantine are invalid, but that the health officer, by rules and regulations framed and put in force by him thereunder, places an embargo in fact on all interstate commerce between the State of Louisiana and the State of Texas, and that the Governor permits these rules and regulations to stand and be enforced, although he has the power to modify or change them. The bill is not rested merely on the ground of the imposition of an embargo without regard to motive, but charges that the rules and regulations are more stringent than called for by the particular exigency, and are purposely framed with the view to benefit the State of Texas, and the city of Galveston in particular, at the expense of the State of Louisiana, and especially of the city of New Orleans.

But in order that a controversy between States, justiciable in this court, can be held to exist, something more must be put forward than that the citizens of one State are injured by the maladministration of the laws of another. The States cannot make war, or enter into treaties, though they may, with the consent of Congress, make compacts and agreements. When there is no agreement, whose breach might create it, a controversy between States does not arise unless the action complained of is state action, and acts of state officers in abuse or excess of their powers cannot be laid hold of as in themselves committing one State to a distinct collision with a sister State.

In our judgment this bill does not set up facts which show that the State of Texas has so authorized or confirmed the alleged action of her health officer as to make it her own, or

from which it necessarily follows that the two States are in controversy within the meaning of the Constitution.

Finally we are unable to hold that the bill may be maintained as presenting a case of controversy "between a State and citizens of another State."

Jurisdiction over controversies of that sort does not embrace the determination of political questions, and, where no controversy exists between States, it is not for this court to restrain the Governor of a State in the discharge of his executive functions in a matter lawfully confided to his discretion and judgment. Nor can we accept the suggestion that the bill can be maintained as against the health officer alone on the theory that his conduct is in violation or in excess of a valid law of the State, as the remedy for that would clearly lie with the state authorities, and no refusal to fulfil their duty in that regard is set up. In truth it is difficult to see how on this record there could be a controversy between the State of Louisiana and the individual defendants without involving a controversy between the States, and such a controversy, as we have said, is not presented.

Demurrer sustained and bill dismissed.

MR. JUSTICE WHITE concurred in the result.

MR. JUSTICE HARLAN concurring.

Taking the allegations of the bill to be true — as upon demurrer must be done — this suit cannot be regarded as one relating only to local regulations that incidentally affect interstate commerce and which the State may adopt and maintain in the absence of national regulations on the subject. On the contrary, if the allegations of the bill be true, the Texas authorities have gone beyond the necessities of the situation and established a quarantine system that is absolutely subversive of all commerce between Texas and Louisiana, particularly commerce between Texas and New Orleans. This court has often declared that the States have the power to protect the health of their people by police regulations directed to that

end, and that regulations of that character are not to be disregarded because they may indirectly or incidentally affect interstate commerce. But when that principle has been announced it has always been said that the police power of a State cannot be so exerted as to obstruct foreign or interstate commerce beyond the necessity for its exercise, and that the courts must guard vigilantly against needless intrusion upon the field committed to Congress. *Railroad Co.* v. *Husen*, 95 U. S. 465, 470–473; *Hennington* v. *Georgia*, 163 U. S. 299, 313, 318; *Missouri, Kansas and Texas Railway* v. *Haber*, 169 U. S. 613, 628, 630. The present suit proceeds distinctly on the ground that the regulations established by the authorities of Texas under its statute go beyond what is necessary to protect the people of that State against the introduction of infectious diseases and destroy the possibility of any commerce between New Orleans and Texas. Now, if Texas has no right, by its officers, to establish regulations that unreasonably or unnecessarily burden commerce between that State and Louisiana, and if the State of Louisiana is entitled, under the Constitution, to have the validity of such regulations tested in a judicial tribunal, then this court should put the defendants to their answer, and the cause should proceed to a final decree upon its merits.

But I am of opinion that the State of Louisiana, in its sovereign or corporate capacity, cannot bring any action in this court on account of the matters set forth in its bill. The case involves no property interest of that State. Nor is Louisiana charged with any duty, nor has it any power, to regulate interstate commerce. Congress alone has authority in that respect. When the Constitution gave this court jurisdiction of controversies between States, it did not thereby authorize a State to bring another State to the bar of this court for the purpose of testing the constitutionality of local statutes or regulations that do not affect the property or the powers of the complaining State in its sovereign or corporate capacity, but which at most affect only the rights of individual citizens or corporations engaged in interstate commerce. The word "controversies" in the clauses extending the judi-

cial powers of the United States to controversies "between two or more States," and to controversies "between a State and citizens of another State," and the word "party" in the clause declaring that this court shall have original jurisdiction of all cases "in which a State shall be party" refer to controversies or cases that are justiciable as between the parties thereto, and not to controversies or cases that do not involve either the property or powers of the State which complains in its sovereign or corporate capacity that its people are injuriously affected in their rights by the legislation of another State. The citizens of the complaining State may, in proper cases, invoke judicial protection of their property or rights when assailed by the laws and authorities of another State, but their State cannot, even with their consent, make their case its case and compel the offending State and its authorities to appear as defendants in an action brought in this court. If this be not so, we were wrong in *New Hampshire* v. *Louisiana*, 108 U. S. 76, in which case it was held that one State could not, by taking charge of demands or debts held by its citizens against another State, acquire the right to bring a suit in its name in this court against the debtor State.

I must express my inability to concur in that part of the opinion of the court relating to the clause of the Constitution extending the judicial power of the United States to controversies "between a State and citizens of another State." In reference to a controversy of that sort the court says that where none exist between States, it is not for this court to restrain the Governor of a State in the discharge of his executive functions in a matter confided to his discretion and judgment. But how can the Governor of a State be said to have an executive function to disregard the Constitution of the United States? How can his State authorize him to do that? It is one thing to compel the Governor of a State, by judicial order, to take affirmative action upon a designated subject. It is quite a different thing to say that being directly charged with the execution of a statute he may not be restrained by judicial orders from taking such action as he deems proper, even if what he is doing and proposes to do

is forbidden by the supreme law of the land. His official character gives him no immunity from judicial authority exerted for the protection of the constitutional rights of others against his illegal action. He cannot be invested by his State with any discretion or judgment to violate the Constitution of the United States.

The court also says that it cannot accept the suggestion that the bill can be maintained as against the health officer alone on the theory that his conduct is in violation or in excess of a valid law of the State, as the remedy for that would lie with the state authorities, and no refusal to fulfil their duty in that regard is set up; and that it is difficult to see how on this record there could be a controversy between the State of Louisiana and the individual defendants without involving a controversy between the States. But the important question presented in this case — if the State of Louisiana in its sovereign capacity can sue at all in respect of the matters set out in the bill — is, whether the regulations being enforced by the health officer are in violation of the Constitution of the United States. The opinion of the court will be construed as meaning that even if Louisiana be entitled, in her sovereign capacity, to complain of those regulations as repugnant to the Constitution of the United States, it could not proceed in this court against the defendant health officer, and that its only remedy is to appeal to the authorities of Texas, that is, to the Governor of that State, who has power to control his co-defendant, the health officer, and who has approved the regulations in question. I am not aware of any decision supporting this view. If the regulations in question are in violation of the Constitution of the United States, the defendant health officer, I submit, may, without any previous appeal to the Governor of Texas, be restrained from enforcing them, either at the suit of individuals injuriously affected by their being enforced, or at the suit of Louisiana in its corporate capacity, provided that State could sue at all in respect of such matters.

Although unable to assent to the grounds upon which the court rests its opinion, I concur in the judgment dismissing

the suit solely upon the ground that the State of Louisiana in its sovereign or corporate capacity cannot sue on account of the matters set out in the bill.

MR. JUSTICE BROWN concurring in the result.

I am not prepared to say that if the State of Texas had placed an embargo upon the entire commerce between Louisiana and Texas, the State of Louisiana would not be sufficiently representative of the great body of her citizens to maintain this bill.

In view of the solicitude which from time immemorial States have manifested for the interest of their own citizens; of the fact that wars are frequently waged by States in vindication of individual rights, of which the last war with England, the opium war of 1840 between Great Britain and China, and the war which is now being carried on in South Africa between Great Britain and the Transvaal Republic, are all notable examples; of the further fact that treaties are entered into for the protection of individual rights, that international tribunals are constantly being established for the settlement of rights of private parties, it would seem a strange anomaly if a State of this Union, which is prohibited by the Constitution from levying war upon another State, could not invoke the authority of this court by suit to raise an embargo which had been established by another State against its citizens and their property.

An embargo, though not an act of war, is frequently resorted to as preliminary to a declaration of war, and may be treated under certain circumstances as a sufficient *casus belli*. The case made by the bill is the extreme one of a total stoppage of all commerce between the most important city in Louisiana and the entire State of Texas; and while I fully agree that resort cannot be had to this court to vindicate the rights of individual citizens, or any particular number of individuals, where a State has assumed to prohibit all kinds of commerce with the chief city of another State, I think her motive for doing so is the proper subject of judicial inquiry.

Syllabus.

It is true that individual citizens, whose rights are seriously affected by a system of non-intercourse, might, perhaps, maintain a bill of this kind; but to make the remedy effective it would be necessary to institute a multiplicity of suits, to carry on a litigation practically against a State in the courts of that State, and to assume the entire pecuniary burden of such litigation, when all the inhabitants of the complaining State are more or less interested in the result.

But the objection to the present bill is that it does not allege the stoppage of all commerce between the two States, but between the city of New Orleans and the State of Texas. The controversy is not one in which the citizens of Louisiana generally can be assumed to be interested, but only the citizens of New Orleans, and it therefore seems to me that the State is not the proper party complainant.